

App. F. IX-4

Previous References

File No. 24-31

Serial Nos. 10-13

Later References

Inv 5-33-7, 21-25
21 239-25-1-14

GENERAL AND REVENUE SECRETARIAT

Serial Nos. ~

Part B for May 34

SUBJECT.

O.S. 28/30-31 on the file of ~~the District~~ *provisional*
Hew Products Co. Ltd)

Thus decreed.

O.P. Singh d 11.5.34

To

The Govt. Advocate

Instructions to make further execution proceedings
as to what in Govt. full rights to the
letters already attached.

(52) The civil suit is likely to take some time before it is decided. If the two directors can be classed among those thoroughly honest & honourable people who readily place their properties, movable & immovable, at the disposal of their creditors, and can also be trusted to continue to remain in that class until the final disposal of the suit no interim orders may be necessary. Otherwise, the interests of Govt seem to require such orders. This past conduct as Directors, and their behaviour in the course of the negotiations betⁿ them & Govt may perhaps have to be taken into account in arriving at a decision.

If considered necessary, a confidential report from the Dis: & Co may perhaps be obtained as to their assets & liabilities and recent disposal of properties if a

The issue of interim orders is quite incidental, especially in such important suits, and I ~~apprehend~~ apprehend no formidable difficulty to obtain them if the Govt's so desires.

General and Revenue
Secretariat

File No

of 193

Ser
No

56) A report to the Director
of I & C is also put up

Dewan

N.O. letter 536 to the Dir of S.O. 7
re: assets & liabilities of directors

N.O. letter NO 4025 D. 12. 3. 31 from Dir of
I & C (S.O. 7) furnishing certain information
re: assets of the directors mentioned & stating
that there have been no disposals of property
made recently, by the gentlemen -

Letter No 4095 dt 16.3.31 from the
Dir of S.O. & stating that he has
addressed the Dt Registrar of Dist. Mysore,
Kolar & Hassan in the matter -

For formal

Legal R^r

DDP

1873

D^m 18/3

Letter no: 543/p dated 23.3.31 to the Dir
requesting that the inquiry may be terminated
early

Letter no: 4227/ dated 23.3.31 from the Dir
forwarding a statement of documents executed
in favour of Mandi Heenan from 1st July
1924 up to date in the Kolar Dt.

L.R's remarks

This shows that he does not
understand what is wanted. Please
make the point clear.

SD P.M. 28/3.

Draft reply butuh

L.R)

b⁷ DDP

DDP

26/3

To, C. Rangana The Rao Sahab, Esq

D.O No 543/p dated 26th March

re: disposal of property by

messrs B.K.G & M.H

A. R. NAGESVARA IYER, B.A., B.L.,
ADVOCATE.

ಎ. ಆರ್. ನಾಗೇಶ್ವರ ಐಯ್ಯರ್, ಬಿ.ಎ.,ಬಿ.ಎಲ್.
ಅಡ್ವೋಕೇಟ್,
ಚಿಕ್ಕಪೇಟೆ. ಬೆಂಗಳೂರು ಸಿಟಿ.

HICKPET.

Bangalore City 1st April 1931.

P. Mahadévaiah, Esq., B.A.B.L.,

Law Secretary to the Government of Mysore,

Bangalore.

Dear Sir,

(63) The Sandal Oil Civil Suit came on for hearing yesterday. The third and fourth defendants had been served in person, and they are directed to file their written statements on 1st June 1931. The summons to the first and second defendants were not ~~at all~~ served. It is also reported that the ^{fifth} ~~fourth~~ defendant has since become a major. That has got to be ascertained and the needful done ~~in~~ before the fourth instant. I am writing to the Director in the matter. I would also suggest that we might move in the matter of having a Receiver appointed for collecting the debts due to E.F. Company.

Yours sincerely.

C.O. Letter no: 4316 dated 31st March 1931 from
the Director of S.O. & enclosing copies of letters
from Mr Rego of Blore, Mysore & Hassan regarding
the disposals of properties by messrs B.K.G.
& Co

155) There has been only one small
alienation by Assoot effected during the
last 4 years by Mr B.K.G.-

156) As regards Mr M. Harinauna, during the
months of Sept & Decr 1928, some 4
512, at Virveswara purnam appear to
have been sold.

157) There do not seem to be material
in deciding whether any interim orders
may be obtained against these two defendants
in S. civil case. (Refce: 1921 A.D. A. para 69).

158) Under order 38 rule 5 C.P. Code, before an
order for attachment before judgment can be
obtained, it must be shown by affidavit
that the defendant, with the intention of
delaying or obstructing the execution of any
decree that may be passed against him
is about to dispose of the whole or any
part of his property or is about to remove
the same from the local limits of the jurisdiction
of the Court.

159) Submitted for orders. Refce.
paras 52 & 53. *Infra*
Legal R^y

Serial
No.

Subd. 1. unrecd.

No. 4348 of 2.4.3
from Dir of S.O. 9.
Appt of guardian.

70) Action cannot be taken ^{without proper} ~~as such~~ materials. Mr. Dir. S.O. 9. to be asked to be vigilant in the matter, and report to Govt in case of such attempts on the part of the depts. concerned.

N.B. I have shown that the appt for the appt of Rec. was filed in ch 601

Letter from Mr. ARN. Dyer dated 6th April 1931, stating that appt for appointment of the 5th deft as guardian of minor 6 & 7 and for appt of Dir of S.O. 9 as receiver to file bills for recovery of debts attached were filed on 5th inst. that order could not be held since the Judge was not in station.

To,

The Dir of S.O.

No. 52/p dated 8th April 1931 requesting him to be vigilant in the matter.

Letter no. 4398 of 8.4.31 from Director forwarding copy of two affidavits filed by the guardian to minor debts & appt of receiver to file

u.O. letter No: 4613 dated 23rd
 April 1933 intimating of the sale
 of S.N. 25 in Grandabelli village
 Auction taken by our B. Garudach
 on 21-2-31.

Submitted for perusal.

Refer. para 70 supra.

Legal R^r)

10/11

I wish to speak to Mr.
 N. Lynn about it.

10/11
 24/1

Issue letter put up

100/2574

Letter No: nil dated 16th May from Mr.
 Nagewara-ger

Re 1) Milk Products

- 1) Filing of suits to recover the
 debts attached
- 2) Taking out an order of adj.
 against V's heirs re: Jewels
 with Collet & Co -

Drafting reply as instructed
 therewith put up for consid.

Legal R^r

10/11

16/11

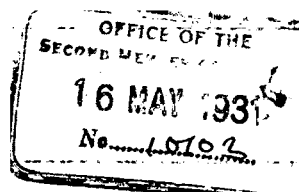
29 2 in pursuance of

2nd member

1st Member

made

17.5.31/16/



To,

H. R. Nagaswami Esq.

579/p dated 18.5.31

authorising the filing of suit

Against M D S & Asbestos

Letter dated 25/5/31 from Mr A.R.N.

for, forwarding copy of letter to Dir of SOF
requesting him to meet for further action -

82 L.R's orders

"Please write to Dir of Soc

SD P.M. 25/5-

83 Draft for purchase

L.R.)

DDP
25/5-

To, Dir of SOF

587/p dated 25.5.31

Copy sent to Mr A.R.N. Esq. (29.5.31)

Copy of letter by Director of SOF to
Rev Secy regarding appointment of
an auditor for investigation
into the accounts before filing suits
against M D S & Asbestos.

5391

1/D

D.O letter No: 5133 dated 30 May 1931 from
the Director of S. O. & Staffing that
an investigation of the accounts of Escomplan
is necessary before filing suits against
M. S. & Asbestos & that he has moved
the Govt thro' Secy to place the
services of an auditor for the purpose
& requesting the Legal R^y also to
move Govt

The Secy may perhaps be
consulted as to what action has
been taken on the reference of the
Director.

Legal R^y

MNP

1/6/31

Secy with Comptroller

P^m 1/6/31

Refus

MNP

R^y

2/6/31

The Comptroller was requested
to state if he could depute an Auditor
for the work and he has since replied
that Mr. K. Nathuram, Oppg. Supdt. of
office, may be deputed for the work on
the terms recommended by the Dir. The
file is being kept for ref.

No. 4.6.10.1.

D. 70.5.5

807 78.30.3

MNP

4/6/31

R^y 7/6/31

Secy

v. the order in file No. 807 70.30.3

Serial
No.

Extract from File No. 78-30/S.O.F. (D. no. 7855)

37) The Comptroller's proposals as regards the deputation of Mr. Natarajan and the allowance to be given to him may be approved. The deputation may be for a period of one month in the first instance.

Intd. M.S.R.
4-6-31

Dev. Secy.

I agree
Intd. M.N.R.
7-6-1931.

First Member

Intd. M.N.K.
10-6-1931.

Law Secty. K.P.

11.6.31

38) Submitted for perusal - No report as to the proposed suits against M.D.S. & Asbestos having been filed has been received as yet.

Legal Secy.

DRP
11/6

39) Mr. W. Jeyar has promised to meet me to-morrow to discuss certain points in this matter to-morrow.

40) for further orders, if any

(L. R.)

DRP
17/6

41) It is met me on the 13th inst. I had a discussion. He promised to make a report which has not been received. maybe tomorrow. 18/6

Letter dated 18th June 1931 from Mr. A. R. Nagewara Esq forwarding a draft plaint for approval in the proposed suit against M. D. S. for approval and stating that the plaint against Asbestos Co. will be on the same lines.

qv) The Draft plaint has to be approved & returned to us. Papers were dry for further action being taken before the end of this month.

Regal R^r

mp
18/6

q3) The draft plaint is in order & may be approved

Both the suits may be filed
as proposed by mem. n. Sept

kindly if it is invited to my remarks
on the margin of Mrs. H. Lyne's letter.

Reversing the entries in an account
books can only be made to rectify
any mistake which could not be
rectified by any other means

In the present case, it is difficult to say that the entries have been made with an honest object. The entry does not state that any money has been received. No reason is assigned to justify this doubtful entry, and it bears an unmistakable badge of fraud on its face.

Dr. 18/6/31

2nd Member
1st Member
New one

mark
- 19.6.31

19/6/81
R. m. 10/6/81

D.m. 19/6/31

20/6/91

Two separate runs may be
opened one for
Sait aft Asbestos
+ the other aft M.D. Symposium.
The Maint copies in each of
them have to be obtained from
FBI's office + the probers
A each case watched
Separately

DOJ
4-7-31
Separate files will be opened after
receiving the necessary plaint copies in
of the cases
TSD

Serial
No.

94) Draft reply to Mr. Nagawana.
Govt. Secy, returning the copy of
the plaint is put up for ap.
Ch Secy!

to

the Govt. Ad.

No. P. 7908 d 22.6.31 returning the copy
of the plaint and requesting to take immediate
action to ~~the~~ institute the suits proposed.

observed
Secy S. B.

TSB
23/6

The S.O. 7. Case was
for W.S. on 16.31
Please enquire at
Mr. A's office, to
which date it stands
now posted & for
what purpose
Its no. given
may also be
ascertained
18/7/31

Letter of 30th June from Mr. A.R.N.
stating that the cases have been
filed on 29.6.31.

96) Seen by Mr. Secy, 22.6.31
The letter is in the file re: defn case a
S. J. R. R. R.

O.S. 28 of 30
posted to 13.7.31
for TS to dep.

Letter no 84 dated 23rd July 1931 from the
Govt Advocate reporting that arguments were
heard in O.S. 28/3031 (Govt vs. Everglow Production).
Correction with applications of the debts for
the particulars and for inspection of accounts books
that the case stand adjourned to 31st inst.
orders were made.

Further report may be awaited
Sub^d for perusal.

TSB
25/7

MP
25/7/31

Progress report is not received.

Dft. Enquiries & put up for orders

TSB
3/8

Issue
MP
3/8

Repl being received in time, no delay
in time.

Letter no 83/31-32 dated 3rd Aug 1931 from
Govt. Adv. forwarding copy of the plaints
two cases and intimating that the suits
posed to 13th Aug 1931.

90) Govt. Adv. state that O.S. 20/3031
to 7th inst. for orders in preliminary

If approved the two separate files in
to watch the progress of the case
Myson, Rev. Syndicate, and the Myson
20th LTD.

Sub^d for perusal orders

TSB
8/8

Please enquire Govt Advocate
whether any orders have been
by the Court in this.

Serial
No.

97) Dfr to the Govt. AD. 5 pages

KD
1931

Issue as revised.

18/11/31

Issued No. P. 1049 d 17.8.31

Letter no. 20 dated 18th Aug 1931 from the Govt. AD. ~~stating~~ stating that unless we passed on preliminary objections, and the case stands poised to 24th inst for the purpose of filing a memo.

100) Of the records seized by the Police in the Criminal case against an Silaramachari some were produced in Additional District Magistrate, Mysore. These records after disposal by the High Court have been returned to the District Magistrate, Mysore; in whose office Mr. Nageshwar for himself has inspected them according to his letter of 3rd Jan 1931.

101) The remaining papers & books were put in 7 boxes by the Police & delivered over to this office, but on a summons from the District Judge, Mysore on 10.5.25 or 14.25 they were produced through Mr. D. Seshagun Rao, A.S.P. in the Court of the District Judge Mysore on 4-6-30. Mr. Nageshwar for himself inspected these records also.

So far as is known here, the goods seized by the Police are in no other office -

in Draft reply to Mr A R N is is sent up accordingly. If further information is req^d he may consult Mr C. M. H. Ranjodha Singh, who was the investigating officer in the case -

GENERAL SECRETARY
20 AUG. 1931
No. _____

Gen Secy

my

20/8

103) Item 2 Submit to Chamber for perusal to Mr 20/8

iii) Issue advice + result my 20/8

To

The Gov. Advocate.

D.O. No. P. 1121 dated 20-8-31 stating the records seized by the Police in the S.O. Criminal Case, and produced in the Court of the Addl Dist Mag^{re} Mysore were returned by the H.C. after disposal of the appeal to the D.M. Mysore, and that those seized and not produced were put in several sealed boxes and have been produced in the D.C. Mysore by Mr. D. S. Lagori Rao in pursuance of summons on 25/8/31, and requesting him to consult Ranjodhasingh for any further information required in the

Sub? for perusal after issue

TSD
24/8

The case stands adj^d to 21.9.3

Passed to 28.10

Sus file

Mr
6/10

Passed to 30.11.31 for w. st.

Sus file 1/12

Mr
3/10

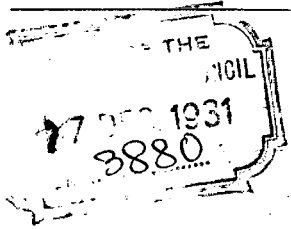
On letter no. 34 dated 17th Dec^r from Mr. A. R. Nageswara ¹⁰¹ int^rim^rating that the Essentleur papers ^{are} ~~now~~ still with the K. R. Mills Ltd, may be taken possession of by Govt before they are removed by Mr. Ramalingam the managing Director of the Essentleurs. And suggesting that in the circumst^s

mentioned in the letter, the question of getting an attachment ^{before inst-} of moveables of Mr. Sitaramachari ~~before inst-~~ may

be considered & instructions issued.

- 1) Two ~~points~~ ^{points} are raised in.
- (1) as to securing the Essentleur papers still in the Krishnaswami
- (2) as to taking an attachment of moveables of Mr. Sitaramachari -

Necessary action in both the matters have to be taken by the Director of S.O. & who is the



CHIEF SECRETARY
17 DEC. 1931

Serial
No.

A/

~~transacted~~ acting on behalf of Govt in the suit.
If approved, the Govt Advocate's letter will
be sent to him for disposal.

(Chief Secy)

DDP
17.12.31

First Member) 17/12/31

DDP
17.12

108) A) Yes. He may
be asked to ^{take} prompt action

DDP
17.12.31

DDP
18/12/31

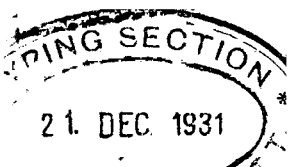
109) Draft to Director of S.O. 7 is
put up for favour of perusal
before issue

(Chief Secy)

DDP
18/12

DDP
19/12/31

110) Issue today
100 P.



No. P. 3413 at 21.12.31 forwarded to A. A. S.
in original suggesting certain steps to be taken
immediately in S.O. civil suit and requesting to take
prompt action in the matter. Cases to S. A. 03414

11) This case was posted to 30/11/31 - Has
a further report been received - If not
Phase call for me

comp
22/12

2) Dft put up.

SD
20/12

18) JSM
m/n 1/12

Issued no. P. 3552 Law d 30.12.31.

Case stands posted 6.25.132

Jan

The Govt. Ad.

Memo no. 495 dated 13.1.32 forwarding
Copy of the letter addressed to the D. G. C.
enclosing copy of the petition filed by Mr. B. K.
Gondachar and requesting to arrange for the
production of a/b books at once

11i) This is a petition by the 4 defts
praying the Court to direct the plaintiffs to
produce the a/b books for the year 1920, for
inspection. Govt. Ad. orders that they should be
produced immediately, so as to avoid further
adjournments being taken in the matter. It is
the D. G. C. requesting him to expedite the matter is sent

SD
16/1
The T. H. himself has addressed
the D. G. C. in the matter. He has
simply sent the copy of the letter for

copy

1-1-1-1

Serial
No.

116) A note regarding the civil case arising out of the Sanvalat defalcation is herewith submitted as instructed.

Chief Secy)

Prp

18/1/32

117) Please see my question at page 2

WJ

118) The Mysore Bank has already obtained a decree against the Escompteurs Ltd. The suit of the bank is still pending. When they obtain a decree & execution against the attached assets, the Mysore can come in for its share distribution out of the realisations under Sec 73 as an account of the balance of the decree amount that may still remain due to ~~the~~ the attachement. my 15/1/32

From

The Govt. Advocate

No. 561 dated 26th Jan^y 1932 informing
that the 1st, 3rd and 4th defendants have filed
their W. statements and the case now stands
opened to 29. mo^o for filing of the statement
of the 2nd def^t.

(14) W. statements have been filed by
Essenfeur Products Co. LTD and Messrs M.
Hariyanna and B. K. Gaudachar.

Sub^d for perusal150
27/1

(15) The main defence raised on
behalf of the Essenfeur Products Ltd
is that the entire misappropriations
were ~~the~~ made by Mr. Navlaxkar
and that the Company is not liable
for the wrongful acts of Navlaxkar
as in the circumstances of the case
there was no contract between
Govt. and Navlaxkar. It is also
stated in para 10 of the written
statement that Govt. having elected
to proceed against Navlaxkar's
estate, is precluded from filing this
suit.

(16) The statements filed by Mr.
Hariyanna the 3rd def^t and Mr. Gaudachar
the 4th def^t, deny their individual
liability for the money misappropriated.

They were that as directors they owed no duty to Govt and consequently, cannot be held liable in damages for any negligence of them - predicate all charges of fraud misrepresentation or of wilful neglect.

2) Para 6 of Mr. Gurusachar's statement is interesting. In it he ~~can~~ does not admit the fact of Govt having incurred loss or damage and accuses Govt itself of gross negligence.

3) The suit is adjourned to 29th, Mr. Sitaramachari's statement.

Submitted for perusal

(Chief Secy)

28/1

First Member

mu

28/11

Thro! Dev. Secy

CHIEF SECRETARY
28 JAN. 1932

urgent
are get copy
re state
red for refce
here

ms
29/11
mu
30.1.32
mu
30/1

mu) Dfr returns the w. statements 5th
18D
4/2

vs one
mu

4408-131 9/2 of 6/2
DO. no 342 on 10/2/32

In summary that he has heard from Mr. Dr. S. O. 2 in the m...

NOTE - Contn. Sheet.
D
7.
* TYPING SECTION *
30. JAN. 1932
4.10 PM
* GENL. & REV. SECT. *

* TYPING SECTION *
WD 70-GBPM-60,000-1328-3
4. FEB. 1932
* GENL. & REV. SECT. *

that as Mr. Lakshminarayana who was 1/2
some dept of the G appears to have
the papers in his possession. he
was to examine them + ^{stating} ~~requesting~~ to
quest the Compt to send the Auditor
Mr. K. Natarajan to accompany him to
Tyrone for the purpose
with a draft.

Issue Today

OMP

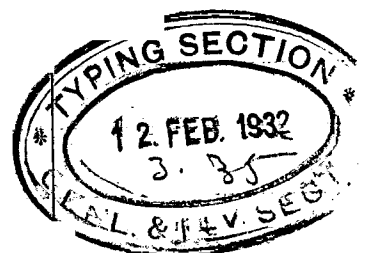
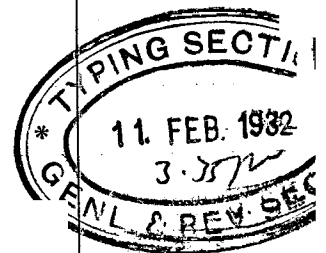
4492 of 11/2/32

from the Govt No. 576 of 7/2-

forwarding the written statement
by the 2nd defendant + intimating that the
stators ~~as~~ to 9.2.31 for filing written
statement

to the G.A.

Please send today 1 copy of
letter addressed to the Comptroller
+ then resubmit after issue



Serial
No.

I presume Mr. Delee
getting copies of these
statements

127) Written statement filed by the
2nd defendant Mr. B. Sitarasachen
is submitted for perusal =

Chief Secy)

mt
12/2/32

First Member ✓

mt
16/2/32

Dir. Sec. Secy

mt
16/2/32

mt

17.2.32

Rg
18/2/32

mt
18/

127) 3 copies of the w. st. filed by the 2nd by
may be got typed before returning the original
to the Gov. Ad

1SD
mt

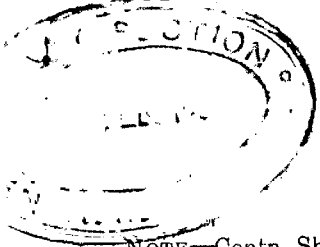
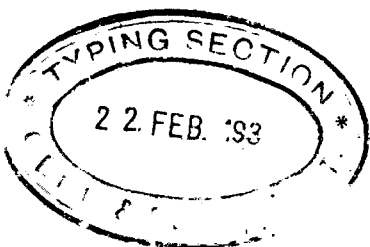
Typing Section

128) Typed copies are compared & put up. Dfts
returning to Gov. Ad. and Dir. of S.O. 7.
are put up for apprl

1SD
mt

mt
24/2

NOTE—Contn. Sheet.



67

O.S. 28/30-31 on the file of the Judge, 13th L.S.
Sandal out Court Sum.

Law File No.

24

of 1931

General and Revenue
Secretariat

Adj^d to 15-3-32

1. 4.32

119) Call for further
progress report

ONE
30/5

130) Pr. report is received to the case
is posted to 8th June 1932.

MI

30/5

From,

The Gov. Advocate

No. 706 dated 7th Feb 1933 forwarding a
copy of the appⁿ filed by Mr. B. Sitaranach
praying for ~~order~~ raising the order of
attachment obtained by him in respect
of his life insurance policy in the off^{ce} B
on the ground that the said policy cannot
be attached under C.P.C. and enquiring whether
you have reserved any rights in such pol
then any amount is due to him from
the assured.

131) Mr. B. Sitaranachar, the manager of the
Essence Products Co^l Ltd has been included
as the 2nd def^t in the above case. ^{Some of his} movable
properties of ~~the~~ are attached before Judge
A paid up policy for Rs 9,130/- in the off^{ce}
branch of the Mysore State Insurance was
also attached. Now Mr. Sitaranachar has

Serial
No.

'as filed an application for setting ~~the~~ ^{the} ~~app~~
on the ground that the ~~dey~~ is beyond the
jurisdiction of the civil Court under Sec 60 d of
the C.P.C.

(132) Under rule 23 of the insurance rules
payment of the amount shall be subject to
deduction of any amount that may be due to
ins by the insured. But G.O. no. H. 3644-6-8.7.
78.22-2 of 7th Jan '22 limits only to the amount
payable by an insured to govt in his official
capacity and not to those which he may owe
to govt as a private person. Evidently in the
present case the ~~Soramachar~~ happens to be a
private person in the present transaction, and
consequently it is doubtful how far ~~his~~ his
insurance amount can be withheld.

(133) The govt. AD. wants to know ~~how~~ far
have reserved any rights on such policies. If
approved the Secy M.S.L.D. Committee may be
consulted u.o. how far it can be done.

150
2/5

According to Sec 60 proviso (f)
of the C.P.C., this amount is not
attachable. The u.o. of 1.1.1922
lays an interpretation on rule 23
of the insurance rules, that deduction
can be made only in cases of amounts
- by the insured to govt in
an official capacity

The following table may show
regional parks.

Gen Sec)

6
2/37 33

nt) A Peças do 507

38, 33 -

6277-73

I.O.No. p 29832 of 4.3.1933

137) Forwarded with Compliments to the Secretary
M. S. L. G. Committee for favour of remarks.
As the Case stands posed to 10th inst. the file
may kindly be returned on 6th inst. positively

B. o

Chahing

For General Secretary

171.04/4.11.07 93-33

Returned with compliments to the
is aware
There has been no special reservation
of rights of Government in the case of
these policies

M. Venkatesaharya

Love 873133

see inst 1

Government Advocate's Chambers,
Public Offices.

Bangalore dated 7th March 1933

Dear Sir.

Original Suit No. 28/30-31 on the
file of the Dist. Judge, Bangalore
Division. (The Govt. of Mysore vs
The Essenflour Products Co. Ltd

It is to invite reference to my letter
No. 706 dated the 27th ultimo, regarding the objections
to be filed by us in the above case on the application
of Mr. B. Seetharamachar for reversing the order of
attachment passed in respect of his Life Insurance
Policy in the Official Branch. As the case is coming
on for hearing on the 10th instant, may I request you
to kindly let me know when I may expect a reply.

Mem 17105/17/11/93
The 1st member (President in S.L.D Committee)
devised in this connection that the following legal
point may be examined in the legislative Branch.

"§ 60 of the C.P. Code relates to an officer of
Govt. This person is no longer an officer now.
Can the exemption above named be claimed
by him?"

The main file is separately returned

G. Madhava Rao
Dy. Secy in S.L.D
Com.

1/3/33

Returned with compliments.

(m²) Under sec 60 C.P. of the Civil Procedure
Code the insurance bonus in the Official Branch
becomes exempt from attachment only "where
the decree relates to a debt due or contracted
by an officer" It is not easy to see how
it can be said that the decree that ^{may} be
^{obtained} ^{against Sitaramachar} in S.O. case relates to a ~~debt~~
debt due or contracted by an officer". Mr.
Sitaramachar is ^{dead} ^{no more} ^{in the} ^{world}.
Committed on Govt in the conduct of the ^{affairs}
for the undal oil business At the time the
debt became due, he was not an officer
at all

The petition may perhaps be contested
on this and any other ground that may suggest
itself to the Govt Advocate
if app^o, this will sent a copy to
the Govt Advocate for necessary

General and Revenue
Secretariat

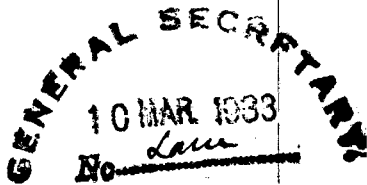
File No.

of 193

[App. F. III—2]

Serial
No.

There action being taken in the
"matter" The case is for hearing tomorrow
the 10



forwarded with compliments to the
First Advocate for favour of necessary action
& return of the file

(145) Perused and returned with compliments.

O.S. 1 - 8 / 30.31 on the file of the D. Ct. B'lore
as Everglens Products Co. Ltd.

Law File No.

of 1932.

General and Revenue
Secretariat

From

The Govt. Advocate

900/32-33 dated 25.5.33 stating
that the settlement of the case against
Def^s 3 to 7; Messrs. Mandi Hariyanna, Bk.
Sundacher and the sons of Mr. Vardhaman
-iah, is reported, and the case
withdrawn against them, and that the
issues were framed on 23.5.33, and the case
was posted to 27 June '33 for evidence.

Submitted for perusal

(b) Dft. Calling for a copy of the issues framed
is put up.

ISO
27/5

Issue
27/5



Issued no. P. 6161 d 21.5.33.

Letter No. 940 dated 12/6 June 1933.

forwarding copy of issues framed
in the case.

In reply please refer to
No. 234

2023 232
OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

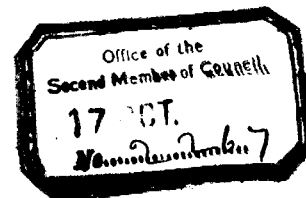
Bangalore,.....16th.....October.....1933.

FROM

A. R. NAGESVARA IYER, Esq., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE



GEN 16 OCT. 1933
No. 234
SIR,

In continuation of this office letter No.168 dated the 9th September 1933, I have the honor to state that Original Suit - No. 28 of 1930-31 on the file of the District Judge, Bangalore Dn. (The Government of Mysore VS. The Essenflour Products Co., Ltd.,) came on for hearing on the 11th and 12th instant, when the evidence of Mr. K. T. Sundara Rao was concluded. Mr. K. Parthasarathi was also examined on behalf of Government and arguments were heard. The case now stands adjourned for Judgment.

us) Submitted for perusal

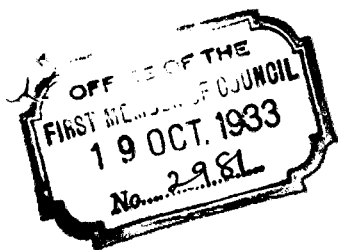
First Member ✓

Second Member

Third Member
(CSN 1.54)

I have the honor to be,
Sir,
Your most obedient servant,

A. R. Nageswara Iyer
Government Advocate.



Ser
No.

Dir. of S. & T.
no. 1976 d 26.10.33
intimate that judgment
was pronounced
on 26/3/34 regarding a
decease against deft 1/32

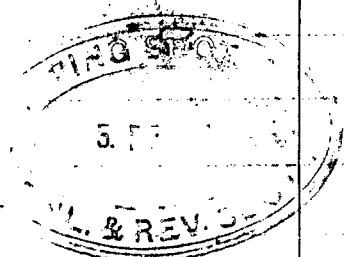


Sum A
31/10/33

151) Dft¹ calling for a copy of the judgment in instant
case.

153) Please see

one



152) Dft R² put up
150/34

155) Issue
one
5/12

Issued no. P. 264 d 7.12.32.

From

The Govt. Ad.

no. 444 d 17.1.34 forwarding copies of
judgment and decree in the above case.

156) A sum of Rs 4063-3-0 is due to Govt under the
decree towards costs in addition to the decree
amount. The Govt. Ad. may be requested to take
necessary action to execute the decree in contribution
in the Dir. S.O. 7.

Cpy of the judgment is submitted for perusal

TSB
19/1

157) Re: the recovery of the decree

R. 7,89,102-13
4063-3-0
R. 7,93,166-0

NOTE—Contn. Sheet.

amount from Mr. Sitaramachari, action
is being taken in a separate file.

158) As for recovery from the Essentfleur Ltd,
the Govt Advocate will be requested to state
whether ^{any action} it is now necessary to get
the book debts due by Asbestos Ltd &
the Dev. Syndicate, vested in Govt. - These
have been attached before court & the
Director has filed suits for recovery of
these debts as a Receiver on behalf of
Essentfleur. Unless ~~these debt~~ the right
to these debts vest in Govt, other debtee holders
against Essentfleur can claim rateable
distribution out of any money that may
be recovered from the Syndicate & the
Asbestos Ltd -

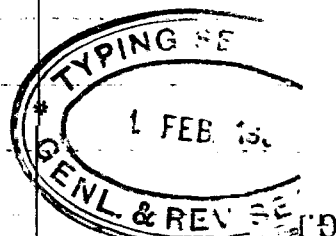
Genl Secy)

one
19/1/34

159) A. Govt Advocate may be
consulted. (Tm
31.1.34

2 x 1

one
31/1/34



General and Revenue
Secretariat

File No.

of 193

[App. F. III—2

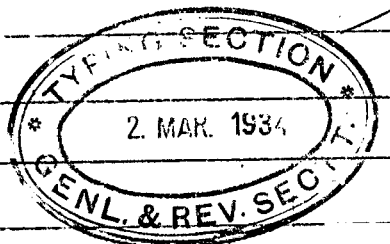
Serial
No.

To,

The Gov. Ad

No. P. 3719 d 3.2.34 enquiring where a
action is necessary to get the bank debts
due by Adm Co^t and the Dev. Syndicate
vested in Gov.

163) Please request the Ad to
send an early reply
mmf



Law File No.

of 1933

General and Revenue
SecretariatSerial
No.

From,

The Gov. Advocate
no. 624 d. 20th March 1934 stating that
the decree obtained by Gov. against the
Essence products Ltd may be put in
execution by applying for sale of the debt
due by the Ashwin Co. Ltd and the Mys.
Dev. Agency which have already been
attached in the case
Sub: see a dft. ^{Ref: para 150 & 159 supra} ~~see~~ returning the
certified copy of the decree.

TSD
31/3

This info was wanted
in connection with Mr. Sitaramachari
petⁿ to enter full satish. Please
put up that file also.

Rof
31/3.

file relating to Mr. Sitaramachari petⁿ is
~~on hand~~ submitted separately.

Let orders therein be
awaited

Rof
2/4/34

Final orders are passed on Mr. Sitaramachari's petⁿ
informing him that Gov. cannot grant his request.
Connected file is listed herewith.

TSD
HC

Serial
No.

~~The~~ Copy of the Judgment and decree in the Sandals oil suit (O.S. 28) is herewith submitted for perusal.

The question of the further action to be taken to recover the ~~same~~ decree amount has to be ~~now~~ now decided. The Govt Advocate in his letter of 28 March 1934 says that the decree may be put in execⁿ by applying for sale of the debts due by Asbestos and the M.D.S., which have already been attached before Judgment & for the recovery of which suits have been filed by the Director of P.T.C. as Receiver appointed by the Court. Unless the debts are sold & purchased by Govt, the realizations in the suits against Asbestos & the M.D.S. will not be work in Govt.

If appd, the G.A. will be requested to take further execⁿ proceedings in the matter.

Gensey)

RSP
1/5/34

Second member

These are d. 25/34
owing to the Essentlon Products Co.
against whom Govt have obt^d a
Further execution proceedings may
taken to realise the debts as
recommended by the Govt Adv.
This is the only chance of recovering
money in this case - RSP

File No.

of 1934

General and Revenue
Secretariat

Serial
No.

Df already put up & sent for app.

7/5

For removal before issue
New Secy)

7/5

Joint Member

9.5

9/5/34

9/5/34

1.5.34

Asses-
Law Rep-
mencys

Issue -

This file may now
be recorded.

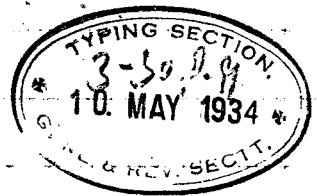
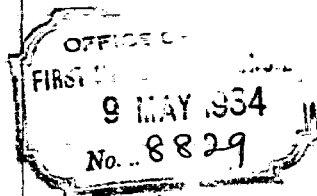
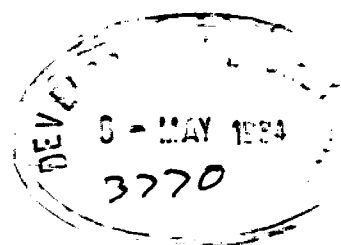
10/5

To,

The Govt. Advocate

No. 5179 d 11.5.34 instructing to
have force execution proceedings now
to vest in Govt full rights to the
debts already attached

Cop to the Dir S.O. 7.



STRICTLY CONFIDENTIAL.

General and Revenue Secretariat,
Dated, Bangalore. 7th March 1931.

531

Dear Mr. Nageswara Iyer,

Certain quantity of Mica valued at £1266-4-1 which was in the custody of late Mr. Mavlankar in London, is said to belong to Mr. Sitaramachar. It is not known whether the mica is still in the possession of the Administrator of Mr. Mavlankar's estate or has been sold by him and it is only a debt due to Mr. Sitaramachar. In either case, since the property would be outside the jurisdiction of the Mysore courts, it may not be possible to obtain orders of attachment before judgment. We have however to prevent Mr. Sitaramachar from recovering either the mica or its value and I am to request you therefore to take necessary action in getting an order of injunction in the matter. A copy of the order may then be sent to the Administrator in London so that he may have knowledge of our claim.

Yours sincerely.

To

A.R. Nageswara Iyer, Esq., B.A., B.L.,
Advocate, Bangalore City.

Sombar 249
Mulla's C.P.C. 694 }

Refce file 120
Law 1931

General And Revenue Secretariat,
Bangalore 8th March 1931

Refer.
in 266 / opinion
of 1930
law

STRICTLY CONFIDENTIAL

Dear Mr Nageswara Iyer.

I am to inform you that late Mr.

Mavlankar had in his possession the marginally noted

- | | |
|---|---|
| <p>-----
1. Two pearl necklaces of a single strand each.
2. A few gold Ramatanka coins
3. A jewelled glass wine cup
4. A single strand of gold beads of different designs, generally known as Jomalai
-----</p> | <p>) jewels which are said to belong to late Mr. Vardhamania's estate, as decided by the judgment of the District Court, Mysore</p> |
|---|---|

pronounced on 11th November 1928 in the action brought by Mrs. Vardhamania against Mr. Sitarachar.

Considering the large amount owing to Government, Mr. Rice who was then in charge of the Sandal oil business in London, had these jewels lodged at Messrs Coutts and Co. in the joint names of himself and Mr. Mavlankar. After the death of Mr. Mavlankar the Receiver appointed by the English Courts wanted to know to whom the articles belonged and the Trade Commissioner for Mysore in London was informed that they belong to the estate of late Mr Vardhamania and that since the institution of a suit against his heirs was under contemplation, the articles might continue to remain with Messrs Coutts and Co

Now that a suit is filed and the heirs of Mr Vardhamania are made parties, I am to request you to let me know what steps you consider necessary to take in order to secure this property to Government. Since the property is in England outside the jurisdiction of our courts, it may not be possible as stated in my letter No. 531/P of the 7th instant, to get an order of attachment before judgment.

Please treat the matter as immediate and confidential.

Yours sincerely,

R. Nageswara Iyer
2/3

A.R.Nageswara Iyer, Esq., B.A.B.L.,
Advocate, Bangalore.

Confidential.

Bangalore,
9th March 1931

9/3/31
Dear Sir,

The Civil Suit was filed to-day and orders were passed by the District Judge, Bangalore, attaching the debts mentioned in the application which you approved of yesterday. Regarding the properties - outside Mysore, Mr. Sitaramachar is restrained from - alienating or otherwise dealing with them. The case is posted to 31-3-1931. You may consider and let me know if any ^{interim} action has to be taken against Messrs. - Harianna and Garudachar also.

Yours sincerely,

M. Mahadevayya

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government, Law Deptt.,
Bangalore.

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE

O. S. No. of 28-29

GOVERNMENT OF MYSORE

Plaintiffs

Vs

1. The Essenfleur Products Co. Ltd.
No. 2, Lalbagh Road,
Bangalore City.

2. Mr. B. Sitarachar, son of
Vyasarayachar, Lakshmipuram
Mysore.

3. Mr. R. Hariyanna, son of
Marianna, Merchant, Kamulpet,
Bangalore City.

4. Mr. B. K. Garudachar, son of
Kesaviengar, Merchant,
Chikpet, Bangalore City.

5. M. V. Santhakumaraiah
6. Lakshmipathaiya
7. Veerendra Kumaraiah

Defendants

Minor sons of Sowcar late Mr. M. L.
Vardhamanaiah, by guardians a) Mr.
K. Chennappa and b) Mr. M. C. Lakshmi-
pathaiya, appointed by the District
Judge of Mysore.

PLAINT UNDER ORDER 7, Rule 1, Civil Pro. Code

1. The address of the party for service of
notices &c.. is that of their Counsel, Mr.
A. R. Hageswara Iyer, Advocate, Bangalore
City.

2. The first defendant company is a private
limited company registered under the Companies
Regulation of Mysore and had its registered
Offices in Mysore City. The second defendant
was the Managing Director of the said company

over since its formation. Defendants 3 and 4 are the Directors of the said company and the remaining defendants i.e., Defendants 5 to 7 are the sons of Mr. Vardhamannaiah who was the Governing Director thereof. As he died about the end of July 1926, his legal representatives viz., defendants 5 to 7 have been impleaded in the suit.

3. The first defendant company was dealing in the manufacture and sale of Essential Oils and was having its business in the foreign countries also.

4. The persons above referred to were also the Directors of another allied concern viz., The Mysore Asbestos Company Limited, which was also a private limited company having its Office in Mysore. The second defendant was the Managing Director thereof and Mr. Vardhamannaiah, the Governing Director.

5. There was another partnership called the M. D. S. Company of which the second defendant was the Manager and the other persons abovenamed were the important partners. This company had 9 partners in all. These 9 partners and 4 others were the shareholders in the other two companies referred to above.

6. All these three companies had their offices in the same building and were practically worked as one concern. The said offices were now located at No. 2 Lalbagh Road, Bangalore City.

7. The first Defendant company which was doing business in essential oils &c began negotiations with Government in May 1923, for taking up the agency for the sale of the Mysore Government Sandalwood Oil manufactured by Government in their factories in Mysore and Bangalore, through their -- Governing Director, Mr. Vardhamanaiah, the father of Defendants 5 to 7. The offer was accepted by Government and the first defendant company and consequently its Directors, i.e., Defendants 2 to 4 and Mr. Vardhamanaiah also, became the Agents of Government for the sale of their Sandalwood Oil in Europe and America from 1-9-1923 and took up the business from Messrs. Whiffin & Sons., who were doing the business as Agents of the Mysore Government till then.

8. Though the first defendant took up the above agency from 1-9-1923 on terms and conditions which had been agreed upon between the parties, the company, i.e., their officers for obvious reasons put off executing the required agreements and after repeated pressure was put on them, the company executed an agreement on 10-6-1925 and that was signed by the second defendant for and on behalf of the company as authorised by the Company. This agreement which was for a period of three years was -- however renewed for a further period of 3 -- years and 4 months on practically the same terms and conditions and this was executed on 8-12-1926 and a similar agreement was -- executed the same day with respect to the -- sale etc., of Oil in America. The original

original agreements are filed ~~in another case~~ and they will be produced in Court later.

9. Among other matters, the first defendant i.e., The Essencflour Products Company agreed to send proper accounts to the Director of - the Sandalwood Oil Factory regularly and to render ^{no} accounts from time to time, and credit to Government the proceeds from the sale of Sandalwood Oil realised on behalf of -- Government without delay, at all events, not later than once a week; and also undertake to be responsible for bad debts and to credit those amounts to Government not later than six months from the date of sale. The defendants 1 to 4 and the late Mr. Vardhaman- aiah were thus trustees as well for the Government of Mysore in the business.

10. The Essencflour Products Company were - doing their business in Europe through their own representative, Mr. K. B. Mavlankar, and were also doing their business in America with their representatives Messrs. Cox, Aspdon and Fletcher.

As the oil was being sold in foreign countries
11. After some time the arrears ^{something} began gradual-ly to mount up, and when asked, false and ^{and gave words to believe} frivolous explanations were given that large amounts were outstanding on the customers.

12. As there were grounds for suspicion, the Sandalwood Oil accounts of the company were - audited on behalf of the ~~company~~ Government about the beginning of 1929 and it was found that a large sum of money viz., about -- £ 65,000/- belonging to Government and which

which had been realized by the agents on behalf of Government had been misappropriated and portions of them utilized and misapplied by the Directors for purposes of the various concerns above referred to and for meeting other liabilities for which the Directors were personally responsible, and that the explanations given that heavy amounts were outstandings on customers were all false. The Directors have thus fraudulently acted in violation of the terms of the agreement to the detriment of Government interests, and have also been benefited thereby to a considerable extent.

13. It was also found out that proper accounts were not sent to the Director by the Company and that the amounts realized by the sale of the oil were utilized ^(by the E.F. directors) for their own purposes and misapplied ^{by them} by the Directors in violation of the trust and that they were crediting to Government only small amounts, and were also ^{intentionally} furnishing false accounts to the Director. ^{to secure the funds} The control of the European business was practically taken out of the hands of the Essofleur Products Co., on 1-12-1928 and that of the American business on 1-1-29.

14. The financial position of the Essofleur Products Co., Ltd., as also that of the other concerns above referred to, as has now been ^{fully} disclosed was, (not sound when the agency was applied for. They were working at a heavy loss and though the Directors were fully aware of this, they deliberately misrepresented to Government that the Essofleur Products Co., were in a flourishing condition. This was done by the

shareholders and defendants 3 and 4 became aware of this fact and felt that the affairs of the Company were not managed properly and that they needed close scrutiny, they wilfully refrained from doing the needful in the matter and allowed things to go on as before with the fraudulent object abovementioned. They actively encouraged the misapplication of the Sandalwood Oil realisations for discharging the liabilities of their concerns for which they were personally liable and defendants 3 to 4, fully knowing that the Essenfleur Products Company and the other allied concerns were working at a loss and had no funds were putting insistent pressure on the Managing and Governing Directors to pay off their liabilities knowing full well that it was the Sandalwood moneys that would necessarily be so utilised. The Directors did not hold meetings regularly and also wilfully omitted to do what was required of them as Directors. On account of their negligence, gross and wilful default and fraudulent conduct, the Directors are also personally liable for the suit claim.

18. Moreover, in order to convey a wrong idea to the Government and to the public, the defendants wilfully omitted to comply with the requirements of the law i.e., the provisions of the Company's Regulation and the Articles of Association and this was done with the fraudulent idea of misleading the Government as to the Company's financial position.

19. Though such of the balance sheets as were prepared as also the accounts of the companies clearly showed that the Companies had no moneys of their own and that they borrowed very largely

largely, the Directors including defendants 3 and 4 continued these concerns with the use of the sandal oil moneys. The Directors are therefore personally liable to make good the loss that has resulted by their breach of trust and fraud.

20. The Governor Director Mr. Vardhamanraiah was also liable to make good the suit claim particularly as the sandal oil moneys were utilized also for his benefit by way of discharging the debts he was personally liable to pay. His estate -- has benefited by his fraudulent act and his estate in the hands of his legal representative, defendant 5 to 7 is therefore also liable for the suit claim.

21. Though there is a provision in the agreement that the differences between the parties should be decided by referring them to arbitrators, those provisions do not apply to the present case. It is further desirable to have the case decided in a Court of Law as the Directors are also sued in -- their personal capacity and as they are guilty of fraud, etc.

22. The cause of action accrued within the jurisdiction of this Hon'ble Court in February 1939, when after audit the above items were brought to the notice of the plaintiff. Regarding the 2nd defendant and defendants 5 to 7 who live in Mysore leave may kindly be granted to file the suit in this Hon'ble Court if the cause of action is deemed to accrue only in Mysore.

23. The Plaintiff is entitled to get from the 1st Defendant Company and Defendants 2 to 4 in/1 --visually and the estate of the late Mr. Vardhaman-

Mr. Vardhamanaiiah in the hands of the defendants
5 to 7, Rs 8,37,665-2-3 as per accounts hereto
affixed -

Rs 45,686-14-3 as per schedule A Rs 6,06,994-11-3

Rs 83,880-1F

2,30,270- 7-0

8,37,665- 2-3

24. The value of the suit for purpose of Court -
fee and jurisdiction is Rs 8,37,665-2-3.

25. The plaint is signed and verified by the
Director of the Sandalwood Oil Factory, whom Govern
do
-ment have appointed to/the same.

PRAYER FOR JUDGMENT

26. The Plaintiff prays that this Hon'ble Court
may be pleased to award to Plaintiff a decree -
for Rs 8,37,665-2-3 with costs and current inter-
est from date of suit to date of payment against
the 1st Defendant company, and Defendants 2 to 4
personally and against the assets of the late Mr.
Vardhamannaiiah in the hands of Defendants 5 to 7
and for such further or other reliefs as the --
Court may deem proper.

Director, Sandalwood Oil
Factory.

I DECLARE that the above allegations are
true to the best of my knowledge, information
and belief.

Director, Sandalwood Oil
Factory.

GOVERNMENT OF MYSORE

ADDRESS FOR TELEGRAMS:
SANDAL

BANGALORE

CODE USED: "BENTLEY'S"

SANDALWOOD OIL FACTORY

Bangalore, 2nd April 1931.

No. 21347
Enc.

Dear Mr. Nagesvara Iyer,

With reference to your letter of the 1st instant which I received yesterday afternoon, I write to state that I was unable to get into touch with Mysore after the receipt of your letter. I have since been able to communicate with the Court of the District Judge in Mysore by 'Phone, and understand that the first son of the late Mr. Vardamaniah has become a major and that the guardian appointed by the Court to this young man and his brothers has been formally removed. I trust you will take the necessary action for appointing the 5th defendant as the guardian of the 6th and 7th defendants in our suit.

Yours sincerely,

A. R. Nagesvara Iyer, Esq., B.A., B.L.,
Advocate,
Bangalore City

Copy of the above is forwarded with compliments to the Legal Remembrancer and Secretary to Government, Law departments, for information.

CR. Rangamallu New Salub
DIRECTOR.

GENERAL AND REVENUE SECRETARIAT

Matter for Council Meeting to be held on

CIRCULATED TO COUNCILLORS.

By Order,

A.R.Nagesvara Iyer, B.A.B.L.
Advocate.

5 Bangalore city,
6th April 1931.

To

P. Mahadevayya, Esq., B.A.B.L.,
Secretary to Government, Law Department,
Bangalore.
=====

Dear Sir,

In the Sandal Oil Civil Suit, necessary applications were filed yesterday in court, for appointment of the 5th defendant as guardian of minor defendants six and seven, and also for the appointment of the Director of Industries as Receiver for recovery of the debts that have been attached. No orders could be obtained yesterday on the Receiver's application as the Judge was not in the Station. The petitions will be sent to his residence for orders.

Yours sincerely,

M. Nagesvara



SANDALWOOD OIL FACTORY

Bangalore, 11th April 1931,

No.

Confidential

4398
4

FROM

C. RANGANATHA RAO SAHIB, Esq., B.A., B.L.,

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE.

BANGALORE.

To

For
Record
D. N. S.

Mahadevayya Esq., B.A., B.L.,

Legal Remembrancer and Secretary to Government
Law Departments.

Sir,

I have the honour to state that as requested by Mr. Nagesvara Iyer in his letter dated 3rd April 1931, I filed two affidavits before the Court of the District Judge Bangalore, in the suit against the Essenfleur Products. I enclose copies of the affidavits for the information of Government.

I have the honour to be,

Sir,

Your most obedient servant,

C. Ranganatha Rao Sahib

DIRECTOR.

m/m

SUBJECT

Section

File No.

Serial No.

Diary No. of letter replied to.....

No.

548

P

General and Revenue Secretariat

()

the

193

To

A. B. Nageswara Iyer Esq B.A.
Advocate.

Date of issue.....

1. 4. 31.

Signed by.....

J. P. C.

Dear Mr. Nageswara Iyer,

I write to acknowledge the

receipt of your letter of this date

reporting as to what took place

in the Sandal oil civil suit yesterday

in the District Court. As regards

the appointment of a receiver

List of enclosures.....

for collecting the debts due to

Essenflour Products Ltd and attached

Copied by.....

before judgment in this suit,

I am to request you to take

Examined by.....

steps at once in the matter.

It is necessary that the Receiver
appointed has to file the suits
before the Courts close for the
Summer! —

In the Court of the District Judge, Bangalore.

Original suit of 30-31.

Government of Mysore vs. E.F.Products Co.. Ltd.,
and others.

Plaintiff's affidavit.

The above suit was filed against the defendants 5 and 7 treating them as minors, and proposing as their guardians two persons who were appointed as such by the District Judge of Mysore.

2) It is now learnt that a couple of days before the suit was filed, the fifth defendant attained the majority, and that that was subsequently reported to the District Judge of Mysore, and that the guardians have been removed from their office.

3) The defendants 6 and 7 who are the brothers of the fifth defendant are still minors and are under the protection and guardianship of their undivided brother, the fifth defendant.

4) The fifth defendant has no interest in the matter in controversy in the suit adverse to that of the minors, and is a fit person to be so appointed.

I declare what is stated above is true.

Bangalore.


Devislori
8. 6. 31

In the Court of the District Judge, Bangalore.

Original suit.

of 30-31

Government of Mysore

vs.

E.F.Products Co.,
Ltd., and others.

Application under Order 32. Rule 3 C.P.C.
=====

For reasons stated in the accompanying affidavit, the plaintiff prays that this Honourable court may be pleased to appoint the fifth defendant in the case as the guardian of minor defendants 5 and 7, and that the fifth defendant may be treated as a major and the case proceeded with against him as he is a major, and that the plaintiff may be permitted to amend the plaint accordingly.

Bangalore,
4th Apr.31.

In the Court of the District Judge, Bangalore.

=====

Original suit

of 30-31..

Government of Mysore

vs.

E.F.Products Co.,
Ltd., and others.

Application under Order 40. Rule 1. C.P.C.

For reasons stated in the accompanying affidavit the petitioner prays that this Honourable court may be pleased to appoint the petitioner's representative, who is the Director of Industries in Mysore as the Receiver for collection of the debts etc., referred to in the affidavit, pending disposal of the suit: and

That an AD INTERIM order may kindly be passed to the above debt, pending disposal of this petition.

Bangalore,
4th Apr 31.

總行設於上海，分行遍設於各埠，資本總額一千萬元，實收資本五百萬元，總行設於上海，分行遍設於各埠，資本總額一千萬元，實收資本五百萬元。

Original suit. of 30 - 31.

Government of Mysore vs. E.F.Products Co., Ltd., and others

[illegible]

In the above case this Honourable Court was pleased to pass an order attaching before judgment two heavy debts payable to the first defendant company by the M.V.S. Company and the Asbestos Company Limited.

2) Strangely enough, the notices were returned unserved for the reason that the Managing Director who is a prominent man of the place was not available. The Managing Director is also the Managing Director of the Asbestos Co., and he is also the Manager of the M.V.S. Company. The first defendant company is therefore not interested in recovering the debt which will very soon become barred by time, if no action is taken for the realisation of the said debts.

3) The petitioner further believes that the first defendant company may allow the debts to become barred, as it would be to the interests of the Directors to do so.

4) If this is allowed to be done, the petitioner will be prejudiced considerably as there are no assets worth named besides the debts in question.

5) It is therefore essential in the interests of justice that a receiver should be appointed for the

realisation of the debts mentioned above
and any other debts or assets of the
company that may be available.

I swear that the above allegations are
true.

Bangalore
4th Apr.

Public Offices
Bangalore 25/4/1930

Dear Sir,

I am desired by the Law Secretary to request you to kindly see him at the office on Monday the 27th instant at any time convenient to you.

Yours sincerely,

A.R.Nageswara Iyer, Esq., B.A.,B.L.,
Advocate, Bangalore.

[REDACTED], ಬಿ. ಎ., ಬಿ. ಎಲ್..

[REDACTED],

[REDACTED], ಬಂಗಲೂರು ಸಿಟಿ.

To

P. Mahadevayya, Esq.

Law Secretary to the Government of Mysore
Bangalore.

Dear Sir:

With reference to your letter of 16-4-1931, regarding the consignment of Musks etc., if it belonged to Mr. Moulankar, the E.F. Company would have no right to the same. The Bank of Mysore would not therefore be competent to object to the delivery of the consignment to Government who have been authorised by Mr. Moulankar to take possession of the same and credit the realisations towards what was due by him. Now that the articles have been ordered to be sold, the Government is entitled to the proceeds realised by the said sale if it is proved before court that the articles belonged to Mr. Moulankar. I suppose therefore that that fact must be made out in the District Judge's court, Mysore.

If, on the other hand, the articles belonged to the E.F.Co., Ltd. we can no doubt have it attached as the property belonged to the E.F.Co., but the difficulty would be ^{that} as the Bank of Mysore has already obtained a decree, they would be entitled to proceed - against these articles. particularly as the suit by Government against the company is yet pending, and no decree has been obtained.

As the money with the District Judge will not be paid over to the Bank of Mysore, pending disposal of the claim of Government,

no need ~~xxx~~ to hurry on the matter at this stage. We might await the decision of the District Judge of Mysore with respect to this claim, and then attach the property if the court holds that the articles in question belonged to the company. I would request you to consider this matter and give your opinion early.

As desired by you I applied for the ~~xxxxxxx~~ appointment of the Director of Industries as Receiver in the case to collect the dues due to the E.F.Co. by the M.D.S.Co., and the Asbestos Co., Ltd. ~~xx~~ as intimated by me already. I understand that order have already been passed, granting our prayer. The suits for recovery of those debts will have to be filed very early, as otherwise they might become time-barred. Please let me know if I may file the suits in consultation with the Director of Industries in accordance with your letter of 1st April 1931 (D.O. No.548/P.)

Lastly about the jewels of Mr. Vardhamanian now with Messrs. Coutts and Co., referred to in your letter of 8th March 1931, as we cannot have an attachment through court, the only step we can take is to obtain an order of injunction, restraining the sons of Mr. Vardhamanian from taking those jewels from Messrs. Coutts and Co. A copy of this order will have to be sent to Mr. Rice and to Messrs. Coutts and Co. This is the utmost that ^{could} ~~can~~ be done.

Yours sincerely,

M. A. ...

Section

File No.

Serial No.

To. 579
F

Diary No. of letter replied to.....

General and Revenue Secretariat

()

the

192

To

A. R. Nageswara Sastry, Esq.

Date of issue.....

18.5.31

Dear sir

Signed by.....

Jmr: P. G.

List of enclosures.....

Copied by.....

Examined by.....

I write to acknowledge

the receipt of your letter of the

even date. I agree that no

immediate action is necessary

to be taken in the Civil Suit

regarding the Husk Products

ordered to be sold by the District

Court, Mysore.

I am to request you to
in consultation with the Director of S.O. 7.
take steps at once to file the

necessary suits necessary to

recover the debts due to the

[over]

Essence of Products Ltd, ~~Per~~

by M. D. S. Co & the Asbestos Co. etc

Re: the jewels of ~~the~~ lat

Mr. Vardhamanna, in ~~your~~^{the} custody

of Messrs. Conlts & Co. the order of

impunction suggested by you

may be obtained and ~~the~~ a copy

of it to sent to Mr. Rice and to

Messrs. Conlts & Co. at London -

The action taken on

all ~~these~~ the matters referred

to above may be intimated

for information of Govt.

P. m.

Yours truly

A. R. Nageswara Iyer Esq B.A. B.L.

Advocate

Bangalore

A. R. NAGESVARA IYER B.A.,B.L.,
ADVOCATE

ಎ.ಆರ್. ನಾಗೇಶ್ವರ ಐಯ್ಯರ್ ಬಿ.ಎ.,ಬಿ.ಎಲ್.

ಅಡ್ವೋಕೇಟ್

ಚಿಕ್ಕಪೇಟೆ, ಬೆಂಗಳೂರು ಸಿಟಿ.

CHIKPET

Bangalore City 23rd May 31

Immediate and confidential.

=====

To

C. Ranganatha Rao Sahib, Esq., B.A.B.L.,
Director of Industries and Commerce in Mysore,
Bangalore.
=====

Dear Mr. Ranganatha Rao Sahib,

I am desired by Government to institute suits
for recovery of the amounts due to the E.F.Co.
You are, perhaps, aware that in the Sandal Oil
Civil Suits, you have been appointed Receiver for
collecting the realizations. I shall be glad if
you can meet me very early, so that the needful
may be done.

W.H. White
Sd/-

Yours sincerely,

Sd/- A.R.Nagesvara Iyer.

Copy to Mr. P. Mahadevayya, B.A.B.L., Law Secretary
to Government of Mysore, Bangalore.

Handwritten signature

SUBJECT.....

.....

Section

File No.

Serial No.

[c 587

No. of letter replied to.....

General and Revenue Secretariat

()

To

193

issue 25-5-3

ad by Am P. M.

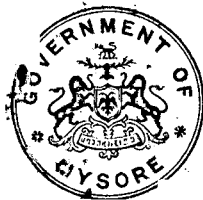
List of enclosures.....

Copied by.....

Examined by.....

Dear sir
I am to inform you
that Government have
sanctioned the institution of
suits for recovery of the amounts
due to the Esampher Co Ltd by
M. D. Siggidicate & associates works,
B.M. which have as you know,
been attached in the Civil suit
filed by govt. I am to request
you to meet Mr. Nageswara Iyer
and take immediate action,
in your capacity as Receiver

[over



CONFIDENTIAL.

SANDALWOOD OIL FACTORY

Bangalore, 25th May 1931.

No.

FROM

RR

RANGANATHA RAO SAHIB, ESQ., B.A., B.L.,

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE,

BANGALORE.

To

The Secretary to the Government of His Highness:
The Maharaja of Mysore, Development Department,
BANGALORE.

Sir,

I have the honour to state that I have been appointed as Receiver in the Civil Suit instituted by me under the orders of Government against the Essenfleur Products. Mr. Nageshwaraiyer ~~our~~ our Legal Advisor recommends the institution of two suits immediately against (i) The Mysore Asbestos Co., (ii) The Mysore Development Syndicate for the recovery of the Book Debts due by the above mentioned companies to the Essenfleur Products. The total amount due by each of the two companies inclusive of interest amounts roughly to about a lakh of Rupees ~~only~~. Before the institution of these suits I understand that it is necessary to investigate the accounts of the Essenfleur Products in some detail. It is therefore necessary to have an auditor deputed ^{from} to the Comptrollers office to look into these accounts carefully. In view of the fact that the inspection of the accounts of the Essenfleur Products will be periodically necessary in connection with these suits, I beg to suggest that the Comptroller may be requested to depute an auditor for the examination of these accounts. The services of the auditor will be required periodically for about a month or so at a time. I request therefore that the Comptroller may be instructed to place an auditor at my disposal in connection with this work. The auditor will be sent back to the

Comptroller's office as soon as his special work is over. The services of the auditor will be continuously required when the case comes up for actual hearing.

The auditor may be paid his usual salary plus his deputation allowance during the period he is engaged on this work. If his services are satisfactory, he may be promised a bonus after the termination of this suit. As the services of the auditor are required urgently, I request that my proposal may be approved and the Comptroller requested to place the services of an auditor at my disposal.

I have the honour to be,

Sir,

Your most obedient servant,

(sd). C. Ranganatha Rao Sahib.

DIRECTOR.

Copy forwarded with compliments to the Legal Remembrancer and Secretary to the Government of His Highness the Maharaja of Mysore.

C. Ranganatha Rao Sahib
DIRECTOR.

22nd June 1931.

Chief
/

The Government Advocate,
B a n g a l o r e.

I am directed to return herewith, duly approved by Government, the copy of the plaint to be filed in the proposed suit against Mysore Development Syndicate, sent with your letter of the 18th instant, and to request you to take immediate action to institute the suits both against the Development Syndicate as well as the Asbestos Co.Ltd. The action taken in the matter may be reported to Government in due course

I have the honor to be,
Sir,
Your most obedient servant,

Donl

For Chief Secretary to Govern-
ment

D.O. letter dated 30th June 1931 from the
Govt. Advocate to the Chief Secretary

The suits against the Mysore Development
Syndicate and the Mysore Steam Company Ltd
were filed yesterday in the Court of the
District Judge Bangalore.

SUBJECT.....

Section

File No.

Serial No.

Diary No. of letter replied to.....

No.

To

347

Mr. A.R. Maggwan Dye, B.A., B.L.,
Govt. Advocate

General and Revenue Secretariat

()

the 193

Date of issue

14.7.31

Signed by

M. Roy

Ser.

With reference to your
letter dated 30th June 1931, reporting
that the Suit. against the Mysore
Development Syndicate, and the
Mysore Asbestos Company Ltd, were
filed on 29th June 1931, I am
directed to request that ^{copies} ~~the~~
of the plaint in both
plaints ~~Copies in each of the~~
~~also the dates of hearing of which they~~
~~above~~ Case & may kindly be
sent for information of Govt.
as an early despatch. The dates to
which the cases stand posted may also
be kindly intimated. I have etc

List of enclosures.....

Copied by.....

Examined by.....

150
13/1

13/7

Ch. Secy

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 13th July 1931.

No.

From

Adhava Rao, Esq., B.A., B.L.,
Chief Secretary to the Government of His Highness the Maharaja of Mysore.

To

A.K. Nageswara Iyer, Esq., B.A., B.L.
Government Advocate,

Sir

Bangalore.

With reference to your letter dated 30th June 1931 reporting that the suits against the Mysore Development Syndicate, and the Mysore Asbestos Company Ltd., were filed on 29th June 1931, I am directed to request that copies of the plaint in both the cases may kindly be sent for information of Government at an early date. The dates to which the cases stand posted may also be kindly intimated.

I have the honour to be,

Sir,

Your most obedient servant,



For Chief Secretary to Government.

130

In reply please refer to
No. 83 *7*

Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore 3rd August 1931. 19

Confidential.

From

A. R. Nagesvara Iyer, Esq., B.A., B.L.,
Government Advocate in Mysore,
Bangalore.

To

The Chief Secretary to the Government
of H. H. the Maharaja of Mysore,
Bangalore.

Sir,

With reference to your letter No. P. 347/Law. dat
the 14th July 1931, I have the honor to forward herewith,
as desired, a copy each of the ~~two~~ *two* ~~Plaints~~ *Plaints* filed in two -
suits against the Mysore Development Syndicate and the -
Mysore Asbestos Co., Ltd. The suits stand posted for -
hearing to the 13th August 1931. It was originally -
intended to claim interest for the previous years also. -
But, as that was likely to lead to other complications, ~~xxxx~~
interest has been claimed only from 1928.

2. No orders were passed on the 31st ultimo, by the -
District Judge, in Original Suit No. 28 of 1930-31 (Govern-
ment of Mysore, vs. The Essenflour Products Co., Ltd.,) on
the preliminary objections raised by the opposite side, and
the case is now posted to the 7th instant for the same -
purpose.

Your most obedient servant,

all as usual 2/8

SUBJECT.....

Section

File No.

Serial No.

Diary No. of letter replied to.....

No.

To

The Govt. Secy.

General and Revenue Secretariat

()

the

193

e of issue.

17/8/31

Signed by

O.S. 28 of 30.31 (9004
vs Essenclear Products Ltd
others) in the
District Court, Bangalore

The above case was reported
to have been posted to 7th
August for orders on the preliminary
objections raised by the defendants
& I am to enquire whether

List of enclosures ~~the said orders~~were passed on the ^{said} date

if so, ~~the~~ a copy of the ^{order}
Copied by ~~order~~ may be sent

for information of Govt.

I have

Examined by

15/8/31

Ser.

With reference to

Your letter O.S. 28 of 30.31 dated

3rd Aug 1931 intimating that

O.S. 28 of 30.31 (Govt. vs the

Essenclear Products Ltd) in the

file of the Dist. Court Bangalore

was posted to 7th inst. for orders

I am directed to enquire

whether orders were passed on

the preliminary objections raised

by the opposite side on the

said date

15/8

In reply please refer to
A-5070

Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore...18th August...1931.

Dear Sir,

Re: O. S. No. 28 of 1930-31 on the file
of the District Judge, Bangalore
Division. (The Government of Mysore
VS. Essenflour Products Co., Ltd.,)

GENERAL SECRETARY
19 AUG. 1931
No. 1015

W. Lee

enclose

With reference to your letter No. P.1049/Law. dated
the 17th August 1931, I write to inform you that Orders were
passed yesterday, in the above case, on the preliminary -
objections raised by the Defendants, and I am enclosing -
herewith for the information of Government, a copy each of
the two orders in the matter.

2. The case now stands posted to the 24th instant for the
purpose of filing a memo showing the various offices wherein
the records seized by the Police in connection with the Sanda
Oil Criminal Case are to be found now so that they may be -
summoned by the Court for giving an inspection to the Defend-
ants. This information may be kindly furnished to me immedi-
ately ^{as} the memo must be filed in the District Judge's Court
before the 24th instant.

Yours sincerely,

H. V. Ramaswami

H. V. Ramaswami, Esq., M.A., B.L.,
General Secretary to Government
BANGALORE

These are applications filed by the 4th and 3rd defendant under rules 4 and 5 of Order VI Civil Procedure Code calling upon the plaintiff to furnish further and better statement of particulars. The 4th defendant characterises the allegations in the plaint as vague. These defendants have been made parties to the suit in virtue of their being directors of the 1st defendant Company, viz., The Essenflour Products Co., Ltd., It is alleged by the plaintiff that the 1st defendant Company who were the Agents for the sale of Mysore Government Sandalwood Oil in Europe and America committed a breach of the terms of the Agency by not crediting to Government the proceeds from the sale of sandalwood oil and in using it for their own purposes as a result of which the plaintiff has been put to a loss. In paras 11 and 13 of the plaint it is alleged that the Directors of the 1st defendant misappropriated and misapplied the proceeds of the sandalwood oil and that they are therefore personally liable. These defendants want the plaintiff to give particulars of the misappropriation and the misapplication.

2. Since defendants 3 and 4 have been made parties in virtue of their being directors of the 1st defendant company the misappropriation and misapplication of the proceeds realised by the sale of sandalwood oil are matters entirely within the knowledge of the Directors of the 1st defendant company, it would not be possible for the plaintiff to give particulars and dates of the alleged misappropriation or misapplication such matters being within the exclusive knowledge of the 1st defendant company and its directors. The plaintiff's claim is based on the very statements furnished to him from time to time by the Managing Director of the 1st defendant company who happens to be the 2nd defendant in this case. A plaint is not required to contain beyond indication, matters which strictly speaking pertain to

the realm of evidence and at this stage I do not consider that it is necessary to call upon the plaintiff to furnish further particulars of the claim since his claim is based upon the statements furnished by the 1st defendant company of which defendants 3 and 4 are directors. As Directors it was their duty to have exercised a control over and scrutinised the ~~actions of the Managing Director and they cannot disclaim responsibility in regard to the actions of or the statements furnished by the Managing Director.~~ In my opinion the plaintiff's allegations are not vague and coupled along with the statements on which the suit is based they are sufficient to enable these defendants to meet the plaintiff's case, regarding being also had to the fact that the plaintiff cannot be expected to have personal knowledge of most of the matters relating to the operations of the 1st defendant Company and that these are matters within the exclusive knowledge of the Directors of the 1st defendant Company. For these reasons I reject Serial Nos. 5 and 7 and call upon the defendants to furnish their written statements.

ORDER ON SERIAL Nos. 6 & 8.

These are applications filed by defendants 3 and 4 for the inspection of accounts which the plaintiff through the police is said to have seized. In a Criminal Case filed - against the Managing Director of the 1st defendant Company who happens to be the 2nd defendant in this case, certain account books had been seized by the Police and inspection is sought of these books of account. Some of these accounts are said to have been produced in another Civil Suit on the file of the District Judge of Mysore and some apparently are with the - District Magistrate, Mysore, to whom they are said to have been returned after the disposal of the Criminal proceedings against the 2nd defendant in the Chief Court.

2. The defendants are entitled under the Civil Procedure Code to an inspection of these accounts. The most convenient procedure will be for the plaintiff under whose orders they were seized in the Criminal Case, to inform the Court, where the accounts can be got at and for this Court to send for these accounts so that the defendants might inspect them. An order will accordingly be made in the above terms.

S. M. Aggarwal
Government Advocate.

SUBJECT.....

.....

Section

File No.

Diary No. of letter replied to.....

Serial No

No.

V. 1141

General and Revenue Secretariat

()

To

the 193

Date of issue.....

20/8
31

Dear Sir,

Signed by.....

M. N. M.

O.S. 28 of 30.31 on the
Tne of the St. Judge, More
(Court v Essentless Products)

List of enclosures.....

Copied by.....

Examined by.....

In reply to your letter no:
20 of the 18th instant, I am
to state that as you know,
three of the records which were
seized by the Police in the Criminal
Case and produced in the
Court of the Additional District
Magistrate, Mysore were ~~the~~ ~~the~~

returned by the High Court after
disposal of the appeal to the
District Munsif, Mysore, in whose
Office, according to your letter of the
2nd Jan 1931, you inspected them
before filing the Civil Suit -

The records seized & not produced
~~appear to have been~~ ^{were} put in seven
sealed boxes and have been
produced in the District Court, Mysore
by Mr. D. Seshagiri Rao in pursuance
of a summons received from that Court
in O.S. 25 of 28.29.

If any further information is
required in the matter, I am to
request you to kindly consult
Mr. C. M. H. Ranjodha Singh who
was the investigating officer in the
Criminal case -

SUBJECT

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.....

Section

File No.

Serial No.

Diary No. of letter replied to

No. *1428*

To *Mr. J. No. 100*
Bangalore

General and Revenue Secretariat

()
the 193

Sir,
In Continuation

Date of issue *4/9/31*

of his office letter no. P. 1121
dated 20.8.31 re: O.S. 20/3031

Signed by *M. H. H.*

in the file of the Dist. Judge
Bangalore (Govt vs. Eastern Film Products)

I am directed to enquire
what ~~has~~ memo for certain
particulars was filed by you on the 14th ult.
August in the case and to which date the
a. referred in your D.O. letter

List of enclosures

sent it is posted for the defendants'
on 20 dated 15th Aug/31 if so
written statements.
a copy of the same may

Copied by *M. H. H.*

kindly be sent for information
of Govt.

Examined by

3rd September 1931.

The General xxxx

The Government Advocate,

B a n g a l o r e.

In continuation of this Office letter No.F.1121 dated 20th August 1931, regarding O.S.28/30-31 on the File of the District Judge, Bangalore, (Government -VS- Essen Flour Products) I am directed to enquire what memo was filed by you on the 24th August in the case and to which date the suit is posted for the defendants' written statements.

I have the honour to be

S i r,

Your most obedient servant,

For General S-

Government.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Read:—

Letter dated 17th September 1931 from the Trade Commissioner reporting that a sum of £87-3-4 representing the balance of the current account of Messrs. Essenflour products Ltd., in the books of the Eastern Bank, London has been received from the Eastern Bank and that this amount will go towards the liquidation of the debt of Essenflour, irrespective of what will be recovered there on the closure of the business of the late Mr. Mavlankar.

Unofficial note No.33 Books dated 29th October 1931 from the Comptroller to Government stating that the amount referred to above has been credited to Sandal Oil Factory Gross Receipts.

O R D E R

No.

D2563-6 / So 74-31-2

Dated, Bangalore, 25th November 1931.

R E C O R D E D.

W. M. Chenniah

For Secretary to Government,
Development Department.

for Mysore
The Trade Commissioner in London.
The Director of Sandal Oil Factories in Mysore.
The Comptroller to Government.
The Government Advocate.

/Copy to Law Secretariat.

SUBJECT

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Section

File No.

Serial No.

Diary No. of letter replied to

No.

Strictly confidential
3413 (1)

To

*The Director of Sandal oil
Factories,*

General and Revenue Secretariat

()

the

193

Sir,

I am directed to

Date of issue

24/12/31

forward herewith the Government

Signed by

M. R.

*(to be obligingly
returned, when
done with)*

Advocate's d.o. letter no: 36
of 1st ec, in original suggesting

steps
to be taken immediately

in the Sandal oil civil suit on the

file of the District Judge, Bangalore

and to request that prompt action

in the matter may kindly be taken

List of enclosures

and a report sent ^{in due course} for the information

of Govt.

Copied by

[Signature]
24/12

Examined by

~~Reply please refer to~~

~~6947~~

~~me one~~

~~"M.L.A." Press :-~~

~~"JURIST," Bangalore.~~

IMMEDIATE.

**The Government Advocate
in Mysore, BANGALORE.**

**The Director of Industries
& Commerce in Mysore, BANGALORE.**

law.
CHIEF SECRETARY
SIR.
13 JAN. 1944

Re: Original Suit No. 28 of 1930-31
on the file of the District Judge
Bangalore Division. (The Govern-
ment of Mysore, Vs. The Essenflou
Products Co., Ltd.).

I have the honor to forward herewith for your information, copy of a Petition filed in Court by Mr. B. K. Garudachar, the 4th Defendant in the above case and to request that the account books mentioned therein may be kindly arranged to be produced before the Court at once, as otherwise, this would be ^{put} forward by the Defendant as an excuse for obtaining

obtaining further adjournment. The action taken
in the matter may be kindly intimated to me early

I have the honor to be
Sir,
Your most obedient servant.

SD/- A. R. NAGESVARA IYER.

Government Advocate.

CSN/1.

Memo No. 495 Dated 13th January 1932.
for file

Copy of the above, (together with a copy of
the application) is forwarded with compliments
to the Chief Secretary to Government, for
information.

M. R. Nageswara
GOVERNMENT ADVOCATE.

IN THE COURT OF THE DISTRICT JUDGE. BANGALORE.

O. S. 28 of 1930-31.

Plaintiff:- Government of Mysore.

-Vs-

Defendants:- Essenflour Products Ltd., & others.

4th Defendant begs to submit as follows:-

1. On the application of this Defendant the Court was pleased to pass an order permitting the inspection of books of accounts, papers etc., concerning the 1st defendant Company in the custody of the plaintiff.

2. This defendant being given to understand that the books and papers of which inspection was granted was in the office of the Director of Industries & Commerce made arrangements for going through the papers.

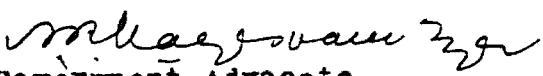
3. The accounts for the year 1928 are not to be in the said office and information has been received that they were not to be found in the District Judge's Court, Mysore.

4. This defendant submits that it is necessary to go through the account for the year 1928.

5. This defendant respectfully prays that this Honble Court may be pleased to direct the plaintiff to produce the account books for the year 1928 in court and enable this defendant to have inspection of same.

I. B. K. Garudachar 4th defendant, do
hereby solemnly declare that what is stated
above is true to the best of my knowledge,
information and belief.

"C o p y"


Government Advocate.

CSM/13-1-32.

3353/572

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore...26th January.....1932.

In reply please refer to
No. 581

Tel. Address
"JURIST," Bangalore.

Urgent

Law
From
CHIEF SECRETARY
To
JAN. 26

The Government Advocate
in Mysore, BANGALORE.

The Chief Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

Sir,

Re: Original Suit No. 28 of 1930-31 on
the file of the District Judge, Banga-
lore Division. (Government of Mysore
VS. The Essenflour Products Co., Ltd.,)

I have the honor to state that in the above
case, which was for hearing before the District Judge
yesterday (25-1-1932), the 1st, 3rd and the 4th -
Defendants have filed their Written Statements and the
case now stands adjourned to the 29th instant for the
filing of the statement by the 2nd Defendant (Mr. B.
Sitaramachar). Copies of the statements now filed
are herewith enclosed for perusal and return.

I have the honor to be,
Sir,
Your most obedient servant,

S. H. Aggarwal

Government Advocate.

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE.

C.S.No.28 of 1930 - 1931.

The Government of Mysore.

PLAINTIFF.

VS

The Essen Flour Products)
Company, Ltd., & 6 others)

DEFENDANTS.

Written statement of the First Defendant.

The 1st defendant Company above named states as follows:-

1. The address of this defendant for service of all notices and processes is that of its Advocate. Mr.P.Rajaratnam at Krishna Buildings, Avenue Road, Bangalore City.

2. This defendant admits the allegations in paragraph 2 to 4 of the plaint and also admits that it negotiated with and obtained from the plaintiff the agency for the sale of the plaintiff's Sandalwood oil in Europe and America as from the 1st September 1923 and entered into the agreements dated the 10th June 1925 and 9th December 1926 referred to in paragraph 8 of the plaint. This defendant however submits that for the reasons and in the circumstances set out hereunder this defendant is not liable to pay the plaintiff the amount claimed or any other sum and also denies the correctness of the statements of account attached to the plaint.

3 (a) - Owing to the very nature of the agency this defendant was obliged to employ a representative in London, for the said purpose this defendant appointed Mr.K.B.Mavlankar, who was the President of the Indian Chamber of Commerce in London and had high credentials and who was acting as the Agent of this defendant prior to September 1923 in the sale of the oils manufactured by this defendant and had considerable experience in the said line and the said appointment was made with the knowledge of the plaintiff and had the approval of its officers.

(b) - In order to safeguard the interests of the plaintiff and duties of the said Mavlankar were carefully

~~XXXXXXXXXX~~

circumscribed and his employment was ~~unfixed~~ confined solely to find purchasers for the sandalwood oil consigned by the plaintiff. By the invoices and instructions issued to the said K.B.Mavlankar, he was not authorised to receive monies from the Purchasers and the purchasers were put ~~in~~ upon notice to pay the prices of the oil directly to Messrs. Coutts & Co., London, with whom an account was opened and it was arranged that the amount standing in the account of Messrs.Coutts & CO., should after deducting all the commission and other charges payable by the plaintiff to this defendant, be transferred every week to the account of the plaintiff with Messrs. Coutts & Co., In order to facilitate that transfer K.B.Mavlankar was with the knowledge of the plaintiff given permission to operate upon ~~in~~ such account of the - plaintiff with Messrs.Coutts & Co.,

(c) - It was provided by the agreement that the 1st defendant may sell oil on credit but upon ~~in~~ its own responsibility.

(d) -The first defendant was a Company registered under Mysore Companies Regulation and the nature of its constitution and its status were well within the knowledge of the Plaintiff and the Plaintiff had ample opportunities to satisfy itself about the same.

(e) - In accordance with the said agreement and arrangement business was conducted, goods were sold, accounts and monies realised and paid and this defendant had no complaint from the Plaintiff untill February 1929, when the Plaintiff took possession without previous notice of all the assets and business of this defendant in Europe and America except that the plaintiff some times complained about the delay in the collection of the outstandings.

4. This defendant now learns that the said Mavlankar contrary to the instructions of this defendant and outside the ordinary course of his employment tampered with the invoices and intercepted the monies from the purchasers and misappropriated

them to his own use. This defendant received no benefit from such misappropriation: this defendant had no knowledge of the same until after the proceedings taken by the plaintiff. This defendant submits that he is not liable to the plaintiff for sums so dishonestly misappropriated by the said Mavlankar.

5. This defendant was never a Trustee for the Plaintiff and did not misappropriate or apply to its own use or for its benefit the monies of the plaintiff and did not commit a breach of trust. This defendant sent to the plaintiff copies of the accounts as were furnished to it by the said Mavlankar and believed them to be correct.

6. This defendant believed that the whole of the amount due to the plaintiff has been misappropriated by the said K.B.Mavlankar as afore ~~said~~ stated without the knowledge or privity of this defendant or its Directors, though the 2nd defendant the Managing Director may have long after such misappropriations had reasons for suspicion about the conduct of the said Mavlankar.

7. The said Mavlankar was in possession of assets and monies of this defendant other than that realised from the sale of the plaintiff's oils and was also occasionally accommodating this defendant. In the course of the business of this defendant drafts were drawn on the said Mavlankar. Some of these drafts it subsequently appears were met by the said Mavlankar contrary to the instructions of this defendant from the sale proceeds of the plaintiff's oil with Messrs. Coutts & Co., Such payments were however mere matters of adjustment and the amounts if any due to the plaintiff in respect of thereof have been paid by transfer of other moneys.

8. Some difficulty has been caused as the Managing Director and the Governing Director were also Managing the other concerns known as the Mysore Development Syndicate and Asbestos Ltd., and they in order to cover various drawings

made by them without the knowledge of the other Directors of this defendant made various transfers in the accounts of this defendant and the said Syndicate and Asbestos Ltd. Such transfers entries were not necessary and did not represent any real transactions as there was no business done by the said Syndicate.

A capital of Rs 2,00,000/- was subscribed and the Directors ~~here xxxxxxxx the xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx~~ of this defendant namely defendants 3 and 4 and the late M.L.Vardhamaniah were men of substance and had resources and credit at their disposal for all the needs of this defendant

9. The Plaintiff early in the year 1929 took possession of all the books and papers and accounts of this defendant, and is still in possession of the same. The Plaintiff also having as already stated taken possession of all the assets and business of this defendant in Europe and America took various steps and proceedings against the said Mavlankar (and as appear from the Schedules to the plaint) recovered from him and other customers and parties moneys payable to this defendant. No account ~~at~~ however has been furnished by the plaintiff to this defendant of the same.

10. This defendant submits that the plaintiff having elected to take proceedings against the said Mavlankar alone is now precluded from instituting this suit or claiming any sum from this defendant.

11. This defendant further submits that in any event the conduct of the plaintiff in taking forcible possession of the business and assets of this defendant including outstanding was wrongful and had caused serious loss and damage to this defendant. The value of the said outstandings etc., this defendant estimates at more than a sum of Rs ,60,000/- and to that extent the claim of the plaintiff must be reduced.

12. This defendant also submits that in the circumstances stated above privity of contract was established between the

the plaintiff on ~~xxxx~~ the one part and the said Mavlankar on the other part and therefore the plaintiff has no claim against this defendant.

13. Alternatively this defendant submits that in any event the plaintiff is bound to render accounts for all the moneys received by it which for its wilful-default or negligence could have been received or recovered and to give credit for such sums as may be found due on the taking of such accounts.

14. Regarding the Schedules to the plaint, this defendant denies the correctness of the same and denies in particular that the plaintiff is entitled to the benefit of the sum of £ 1909-6-3 and £ 5,263-6-9 being commission payable to this defendant or to the sum of £ 5,079-9-3. In the absence of particulars this defendant is unable to plead to the same more definitely.

15. This defendant denies all allegations in the plaint not herein expressly admitted and puts the plaintiff to strict proof thereof.

16. This defendant prays that the suit may be dismissed with the costs of this defendant.

1st Defendant.

Advocate for 1st Defendant.

I, V. Ramalinga Mudaliar, a Director of the 1st Defendant Company above named do hereby declare that what is stated above is true to the best of my information and belief.

Dated this day of January 1932.

A Director of the 1st
Defendant Company.

O.S. No.28 of 1930-1931.

THE GOVERNMENT OF MYSORE

...

PLAINTIFF.

VERUSUS.

THE ESSENFLOUR PRODUCTS; LTD.,
AND 6 OTHERS.

..

DEFENDANTS.

- - - - -

WRITTEN STATEMENT OF B.K. GARUDACHAR, THE FOURTH
DEFENDANT UNDER ORDER VIII, RULE I C.P.C.

The 4th defendant abovenamed states as follows:-

1. The address of this defendant for service of all notices and processes is that of his Advocates, Messrs. N.V.Narasimha Iyengar, C.V. Narasimha Iyengar and T.N. Srinivasa Iyengar, at Chickpet, Bangalore City.

2. This defendant denies any obligation or liability on his part to pay the plaintiff Rs.8,39,793-6-1 the sum claimed or any portion thereof for the reasons and in the circumstances among others hereinunder set out:-

(a) This defendant admits the allegations in paragraphs 2 to 4 of the plaint and states that the 1st defendant was registered as a private limited company with a capital of Rs.2,00,000. This defendant holds 240 ~~xa~~ shares and has fully paid Rs.24,000/-.

(b) The late Mr.Vardhamaniah, the Governing Director and the 2nd Defendant the Managing Director who were mainly instrumental in the formation of the company and who were in every way competent and who by its constitution and Articles were duly qualified managed and supervised the company, its business and its affairs and attended to all matters incidental and relating thereto. After the death of Mr. Vardhamaniah the 2nd defendant continued the management and supervision.

(By Article 114 of the Articles of Association of the said company, it was specially provided among others that the Directors and other officers of the company should be indemnified against all actions, proceedings, costs, charges, losses, damages and expenses, etc., and that no

such officer, auditor, manager or director of the company shall be answerable for the acts, receipts, neglects or defaults of any other officer or trustee or for joining in any receipt for the sake of conformity or for the solvency or honesty of any or other persons with whom any moneys or effects belong to the company may be lodged or deposited for safe custody, or for any insufficiency or deficiency of any security upon which any moneys of the company shall be invested or for any other loss or damage due to any such cause as aforesaid or which may happen in or about the execution of his office or trust unless the same shall happen through the wilful neglect or default of such officer or trustee. This was one of the terms upon which this defendant and the other directors agreed to act as Directors. This defendant and the third defendant were never offered or received any remuneration for their services as Directors.

(d) By Article 84 as it first stood cheques on Company's Bankers had to be signed by the Governing Director. As the first defendant company had to carry on the business at London in England and had to open an account with the Bankers there it was found that it was necessary for the purpose for carrying on the said business that the said Article should be amended and accordingly at a general meeting of the company held on the 17th November 1923 it was resolved that Article 84 should be modified as follows:-

"All moneys bills and notes belonging to the company shall be paid or deposited with the Company's Bankers to an account to be opened in the name of the Company. The Company's Bank Account shall be kept with such Bank or Bankers and to be operated upon by such person or persons as the Directors shall from time to time determine."

and this proposition was confirmed at a Special General meeting held on the 3rd December 1923. At neither of the said meetings was this defendant present.

(e) At a meeting of the Directors of the first defendant company held on the 5th of December 1923 it was resolved that in accordance with the aforesaid resolution passed at the

General Meeting on the 17th November 1923 the Governing 60
Director and B. Sitaramachar the Managing Director the 2nd
Defendant herein and K.B. Mavlankar the correspondent in
London be authorised to operate upon the Banking account
opened with Messrs. Coytts & Company, London, and by another
Resolution it was resolved that the Governing Director and
the Managing Director be authorised to operate on the banking
account opened in the Bank of Mysore Limited and the Eastern
Bank, Ltd. Copies of these resolutions were sent to the
respective banks and parties. Copies were also sent at once
to the plaintiff which was well aware of the reasons and the
necessity for such amendment and authorisation.

(f.) The accounts of the company were audited from time to
time and statements of profits and loss and the Balance-sheets
were prepared by a qualified and independent auditor and
circulated to all persons concerned.

(g) The plaintiff had at all material times notice of the
constitution and rules and regulations governing the company
and was aware of its financial status.

(h) As stated in paragraphs 7 to 9 of the plaint by an
instrument in writing made on the 10th of June 1925 between the
plaintiff of the one part and the 1st defendant only of the
other part it was agreed that the first defendant should be
appointed as the selling agents for the sale in all countries
except India and the Far East of Sandalwood Oil produced and
manufactured by the plaintiff for 3 years from the 1st of
September 1923 subject however to be terminated earlier under
circumstances therein mentioned.

In and by the said instrument it was inter alia agreed:-

(i) that all the sale proceeds less commission and expenses
authorised by the plaintiff should be remitted by the 1st defen-
dant to the account of the Government of Mysore with Messrs.
Coutts and Company in London without any delay and not less
than once a week. It was further agreed that the 1st
defendant should be liable for all moneys recoverable on the
sales effected by them and that any credit created by them
should be at their own risk and that the 1st defendant should

should remit the said amounts to the plaintiff within six months after the sale whether the 1st defendant recovered the same or not.

(ii) As remuneration for its services the 1st defendant was allowed a commission of $3\frac{1}{2}$ per cent on the sale proceeds realised by them.

(iii) It was further provided that the said contract should ipso facto determine on the commission by the agent of any irregularity or fraud on the plaintiff in connection with the said business or upon the 1st defendant failing to carry out any of the stipulations contained in the said writing.

For further particulars this defendant ~~xxxxxx~~ craves leave to treat the said agreement as part and parcel of this his written statement.

In pursuance of such agreement the 1st defendant Company took over as and from the 1st September 1923 the said business from Messrs. Whiffen and Sons the former representatives of the plaintiff in England.

(i) The negotiations resulting in the said agreement were carried on by its Director of Sandal Oil factories on behalf of the plaintiff and by the Governing Director and the 2nd defendant as the Managing Director on behalf of the 1st defendant, and at no time did this defendant take any part in such negotiations; and he did not make any representations to the plaintiff or its officers touching thereto.

(j) The Governing Director M.L.Vardhamaniah died in or about the 24th day of August 1926. By another agreement made on the 9th December 1926~~th~~ the agreement came to between the plaintiff and the 1st defendant company was renewed for a further period of three years and four months from the 1st September 1926 upon the same or similar terms.

(k) as aforesaid the business of the 1st defendant was managed and supervised by the Managing Director the 2nd ~~saxax~~ defendant and to the best of the knowledge of this defendant the sales took place, accounts were settled and all things happened satisfactorily in the normal manner until about February 1929. The plaintiff too~~x~~ repeatedly appreciated the conduct and

development of the business and passed encomiums thereon.

(1) For the first time in February 1929 this defendant to his surprise received a letter from the plaintiff alleging unfortunate occurrences said to have been detected in connection with the accounts of the sandal oil sales. The plaintiff took possession of all the account books, papers and documents of the first defendant company in the Mysore State and elsewhere and has ever since been and is even now in possession thereof.

(m) The plaintiff on or about the 19th March 1929 filed a complaint and prosecuted the 2nd defendant in the Court of the Additional District Magistrate, Mysore, and the 2nd defendant was convicted on the 16th September 1929 for an offence under Section 409, Indian Penal Code, viz., that he has utilised the sandal-~~o~~ilwood oil collections to the extent of £7365-17-10/- between 1st January and 30th June 1926 and the same was confirmed on appeal by the Chief Court of Mysore in Criminal Appeal No.18 of 1929-30 on the 1st of April 1930.

3. This defendant emphatically denies that he has been guilty of any fraud or dishonesty or breach of trust or misappropriation of any moneys of the plaintiff or of negligence wilful or ~~or~~ otherwise or that he has been part~~y~~ or privy to any fraud or breach of trust or misapplication or misappropriation or negligence on the part of any other person whatsoever.

4. This defendant submits that no particulars whatsoever are furnished in the plaint as the plaintiff is bound to regarding the alleged charges of fraud, dishonesty, misrepresentation, breach of trust or negligence and this defendant is in such circumstances seriously prejudiced and finds it impossible to adequately answer such grave but indefinite and vague allegations. As the plaintiff has refused to furnish particulars this defendant submits that the plaintiff is not entitled to join issue in respect of such vague allegations and the plaintiff should be directed to amend the plaint by striking out the same as unnecessary and scandalous.

5. This defendant denies that he is either the agent or the trustee of the plaintiff or that he ever stood in a ~~fidu-~~ fiduciary relationship to the plaintiff or that there has been any breach of any duty on the part of this defendant towards the plaintiff whereby he could possibly be made liable to the plaintiff for any loss or damage. Whatever the position or obligations of this defendant may be towards the 1st defendant company, he owes no duty to the plaintiff who is a creditor and a stranger to the company.

6. This defendant does not admit that the plaintiff has sustained any loss or damage. Even assuming that the plaintiff has sustained any loss or damage, such loss or damage is certainly due to the gross negligence on the part of the plaintiff in not insisting upon the terms of the said agreement between the parties being strictly carried out. At no time prior to February 1929 did the plaintiff make any complaint to this defendant. The plaintiff from time to time passed encomiums in public on the work done by the 1st defendant and its officers and lulled this defendant to believe that the terms of the contracts were being faithfully carried out and thereby contributed to such loss and the plaintiff is not entitled to recover the same from this defendant.

7 (a) Assuming that the plaintiff has suffered loss or damage and such loss or damage was due as alleged in paragraphs 12 and 16 of the plaint to K.B. Mavlankar, this defendant submits that the said Mavlankar was appointed as a representative in London to effect the sales of the plaintiff's oil. The said appointment was made with the knowledge and approval of the plaintiff and had to be so made from the very nature of the agency. This defendant was, as already stated, not aware of such appropriation by the said Mavlankar and had no reason to suspect the same. This defendant in fact was no party and in no way privy to or encouraged such misappropriation and this defendant is not liable to the plaintiff or to any other person in respect of moneys so appropriated by the said Mavlankar who never was the agent of this defendant.

(b.) Assuming for argument that such loss or damage was due to misappropriation as alleged in paragraphs 15 and 20 of the plaint by the deceased Governing Director Vardhamaniah and by the Managing Director Mr. Sitharamachar this defendant ~~xxxx~~ submits that the moneys if any were so misappropriated without the knowledge or consent or convenience of this defendant and this defendant is neither in fact nor in law liable for such ~~misappropria~~ misapplication or misappropriation.

8. Assuming that moneys of the plaintiff were so misappropriated by such Directors or other officers of the 1st defendant company, this defendant submits that he is not in any way liable for the acts or defaults of his co-directors or co-agents or other employee or officer of the company. This defendant further submits that by virtue of Article 114 above recited this defendant is absolved from all liability if any in respect thereof.

9. This defendant does not admit that any portion of the ~~max~~ moneys realised by the sale of the sandalwood oil was used for the purpose of the 1st defendant company. Assuming however that the moneys were so applied this defendant had no knowledge of the same. Nor was he a party or privy and he cannot be made liable for the same.

10. This defendant is ~~kixkix~~ entitled to rely upon the competency skill and integrity of the Managing Director and the Auditors and other officers of the company against whom there was no suspicion whatsoever. The 2nd defendant and other officers of the company were properly qualified and were men of position and influence and this defendant was bound to and did rely upon their efficient management and the honest discharge of their duties. There was absolutely no room for suspicion and no negligence on the part of this defendant and no particulars of such negligence are given.

11. As regards paragraphs 7 and 8 of the plaint, this defendant denies that the Directors of the 1st defendant company became the agents or trustees of the plaintiff by virtue of the contracts dated the 10th of January 1925 and 9th December 1926 or otherwise. This defendant takes strong

exception to the word "obvious" in paragraph 8 of the ⁶⁵plaint and denies that there was any delay on the part of this defendant or that the delay if any was wilful or that he was responsible therefor.

12. As regards paragraph 9 of the plaint, this defendant prefers to refer to the terms of the contracts in writing and denies that the 1st defendant company or this defendant or the Directors of the 1st defendant company or the other concerns at any time became trustees for the plaintiff.

13. As regard paragraph 11 of the plaint, this defendant is embarrassed by the want of particulars and denies that he at any time gave any false or frivolous explanations or was party or privy thereto on the part of others if any and submits that he had no knowledge of the correspondence between the plaintiff and the 1st defendant until after the institution of the criminal proceedings above referred to.

14. As regards paragraphs 12 and 13 of the plaint, this defendant is again embarrassed by the want of particulars and the names of persons referred to and denies that he ever misappropriated or misapplied any moneys of the plaintiff or of the 1st defendant or was at any time party or privy to any such misapplication or that he ever fraudulently or otherwise acted in violation of the terms of the agreements or that he has been in any way benefited by such violation or that he at any time ever furnished accounts false or otherwise to the plaintiff or was party or privy to any false accounts. The Government took over the control of the business without notice to this defendant.

15. As regards paragraph 14 of the plaint the plaintiff knew and was aware of the financial position of the 1st defendant company at all material times and this defendant denies that he or any other Director or officer to the knowledge of this defendant ever made any misrepresentation to the plaintiff. Such grave and serious charges ought not to be made without giving particulars.

16. As regards paragraph 15 of the plaint, this defendant

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does not admit the correctness of the said allegations and submits that he is not aware of what moneys if any of the plaintiff were made use of by the 2nd defendant or the deceased Governing Director for the purposes of meeting the liabilities of or for the use of the 1st defendant or any other company or concern and even if moneys had been so used or applied, this defendant is in no way liable.

This defendant emphatically repudiated the vague allegations made that there has been any gross or wilful neglect on his part or that he acted fraudulently or dishonestly or that he has any knowledge whatsoever or such misapplication if any, This defendant submits that here also no particulars are given.

17. As regards paragraph 16 of the plaint, this defendant again repeats that he has not been guilty of any fraudulent conduct by which the moneys of the plaintiff were misapplied and he emphatically denies that he at any time ever authorised or had knowledge of the misappropriation if any on the part of any other Director agent or officer.

This defendant indignantly denies that he at any time entertained the evil intention of facilitating the misappropriation of the moneys or other assets of the plaintiff or of the 1st defendant company or that he was party or privy to any act or omission by which such intention could be inferred. The plaintiff was well aware why (and it was for necessary purposes - Vide paragraph 2(d) and (e) above) the resolution referred to in the said paragraph was passed by the 1st defendant company. The plaintiff has no right or reason to complain about the resolution and the plaintiff is estopped from doing so. Further the plaintiff being a stranger to the company has no right whatsoever to complain or charge this defendant with negligence or breach of duty if any which he does not admit.

18. This defendant again complains that paragraph 17 of the plaint is too vague and indefinite and denies the truth of the allegations therein. This defendant was never aware until about February 1929 that there was any complaint regarding the management of the 1st defendant company and

and this defendant denies that he at any time encouraged the misapplication ~~misappropriation~~ if any of the sandalwood oil moneys or that this defendant put pressure upon the Managing and Governing Directors of the 1st defendant with the knowledge or intent that the said Directors would or should misappropriate the plaintiff's moneys.

The Directors held meetings when necessary and did all that was required of them by law or by the rules of the 1st - defendant company and denies that he was party or privy to any wilful default, fraudulent conduct or negligence as alleged or otherwise.

19. This defendant finds it impossible to answer paragraph 18 of the plaint as no particulars are given and this defendant denies that he has been guilty of any omission wilful or otherwise.

Paragraph 19 of the plaint is again too vague and indefinite to be effectively replied to. The companies and their directors had ample resources and credit and this defendant denies that he continued the concerns with the help of the - sandalwood oil moneys. This defendant also denies that there was any breach of trust or fraud or that he was guilty of any breach of trust or fraud or that he was ever aware that the moneys of the plaintiff were being misused for the 1st defendant company or any other concern or by any other party.

This defendant further complains that the particulars given in Schedules A and B of the plaint are absolutely inadequate and this defendant is seriously prejudiced by lack of proper statements of account, especially as the plaintiff is in - possession of all the accounts of the 1st defendant and the other concerns. This defendant does not admit the correctness of the said statement and puts the plaintiff to proof of the same.

The plaintiff has failed to give any valid reason for disallowing commission. This defendant submits that the 1st - defendant is entitled to the commission at the rate of $3\frac{1}{2}$ per cent on the sale proceeds under the agreements and the plaintiff was wrong in adding it to the ~~ninth~~ claim in the plaint schedules.

This defendant submits the plaintiff is not entitled to deduct the sum of £.5079-9-3 and further denies that such collections or any part thereof were excessive or unauthorised

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or that the plaintiff is entitled to the benefit of the same. The plaintiff is not entitled to raise any issue in the absence of any necessary and proper averments.

This defendant learns from the plaint and Schedule A and B thereto that subsequent to November 1928 the plaintiff took control and possession of all the business and assets in Europe and America of the concerns and submits that such action was wrongful and the plaintiff is bound to give credit to the 1st defendant for the value of the said business and assets ~~xxx~~ which included stock in trade, moneys due by Mr. Mavlankar and customers. This ^Ndefendant believes on information that the value of such assets amounted to about £60,000/-. In any event the plaintiff is bound to account for the same.

23. This suit is bad for misjoinder or parties and causes of action.

24. This defendant denies all allegations in the plaint not herein expressly admitted and puts the plaintiff to strict proof thereof.

25. This defendant respectfully submits that the plaintiff who has been in possession of all books, papers and correspondence of the 1st defendant company and other concerns should not have made such grave charges of misconduct as such there were against this defendant without giving particulars, and further submits that the suit as against this defendant is vexatious and ought to be dismissed with costs.

Advocates for the
4th defendant.

4th defendant.

I, B.K. Garudachar, the 4th defendant abovenamed do hereby declare that what is stated above is true to the best of my knowledge, information and belief.

Dated this day of January 1932.

4th defendant.

IN THE COURT OF THE DISTRICT JUDGE AT BANGALORE.

Original Suit No.28 of 1930 - 1931.

The Government of Mysore.

PLAINTIFF

VS

The Essen Flour Products)
Company Ltd., and others)

DEFENDANTS.

Under Order VIII Rule 1 of the Code of Civil Procedure:

The third defendant abovementioned begs to state
as follows:-

1. The address of this defendant for service of all notices and processes is that of his Advocate.
2. This defendant does not admit any of the allegations in the plaint not herein expressly admitted and puts the plaintiff to strict proof thereof.
3. This defendant admits the allegations in paragraphs 2 to 4 of the plaint.
4. With regard to the averments in paragraphs 5 and 6 of the plaint this defendant respectfully submits that the same are wholly irrelevant and have no bearing upon the reliefs claimed in the suit and puts the plaintiff to strict proof thereof. This defendant however admits that the 2 companies referred to in the plaint were all under the control and management of the 2nd defendant and late M.L.Vardhamaniah.
5. This defendant admits that he was a Director of the 1st defendant company along with the defendants 2, 4 and the father of defendants 5 ~~and~~ to 7 the late M.L.Vardhamaniah. The 1st defendant company and the Mysore Asbestos Co., Limited referred to in the plaint were and are private Limited companies governed by the rules and regulations contained in that behalf in the Mysore Company Regulation.
6. By the articles of Association of the 1st defendant Company and the resolutions duly passed and binding upon the Company, the Company was under the

direct control and management of the said M.L.Vardhamaniah the Governing Director and the 2nd defendant the Managing Director. By consent of all the Directors and in view of the business capacity of the said two directors the management of the company was to the knowledge of all parties concerned entrusted to and continued to remain in them down to July 1926 when Mr.M.L.Vardhamaniah died and thereafter in the 2nd defendant until the business of the company was brought to a stand still by the plaintiff taking possession and control of the company, its books and properties, an event which happened with regard to the European business on the 1st December 1928 and with regard to the American business on the 1st January 1929.

7. The Managing and Governing Directors namely the 2nd defendant and the said M.L.Vardhamaniah were believed by all parties including the plaintiff to be men of honour and probity incapable of entering upon a career of fraud against any body much less against the plaintiff. The 2nd defendant was a person whose credentials were of a high order and he was undoubtedly a person of large business experience and capacity. The 3 concerns referred to in the plaint were mainly their idea, and this defendant and the other Directors joined in the schemes because they believed that the said two Directors were capable business men in whose hands any concern was bound to thrive.

8. Neither this defendant nor the 4th defendant had the faintest suspicion that there was any fraudulent misappropriation or misapplication of the proceeds of the Sandalwood oil belonging to the plaintiff till February 1929.

9. This defendant admits the allegation in paragraph 7 of the plaint that the agency for the sale of the Mysore Government Sandalwood Oil manufactured in their factories at Mysore and Bangalore was secured through the instrumentality of the Governing Director Mr.M.L.Vardhamaniah but denies the statement therein that the Directors namely the defendants 2 to 4 or M.L.Vardhamaniah by reason of such agency became

the agents of the plaintiff for the sale of their Sandalwood Oil in Europe and America or that they as distinct from the Company took up the business from Messrs. Whiffin and Sons who were the agents of the plaintiff till then. This defendant states that there was no agreement of any kind whatsoever between the Directors and the plaintiff. The only agreements were the written agreements dated the 10th June 1925 and 9th December 1926 between the plaintiff and the Company

10. This defendant admits that though the first defendant took up the agency from 1st September 1923, the company executed the first agreement on the 10th June 1925. This defendant however denies that there is any basis for the sinister suggestion in paragraph 8 of the plaint that there were "obvious reasons" for the Company putting off the execution of the required agreements. This defendant does not understand what is meant by "obvious reasons" in the said paragraph of the plaint and submits that there was no improper reason or purpose behind the delay which took place in the execution of the agreements.

11. With reference to the contents of the written agreements briefly set out in paragraph 9 of the plaint this defendant begs leave to refer to the agreements themselves when produced for a fuller and better understanding of the terms and conditions thereof. This defendant is advised that the statement in the last portion of the said paragraph that the defendants 1 to 4 and the late M.L. Vardhamaniah were or became trustees for the plaintiff by virtue of the terms of the written agreements or otherwise is erroneous and unsound. The relationship of the plaintiff to the 1st defendant company is merely that of contracting parties under written contracts and there is no privity between the plaintiff and the Directors of the 1st defendant Company. Neither the 1st Defendant company nor the directors

thereof were trustees in any sence of or for the plaintiff.

12. This defendant is not personally aware of the allegations in paragraph 11 of the plaint and through out the whole of the relevant period this defendant believed that the 2nd defendant and M.L.Vardhamaniah aforesaid were managing the business and concerns of the 1st defendant company honestly and efficiently.

13. With regard to the allegation in paragraph 12 of the plaint this defendant learns that one Mr.Parthasarathy an officer of the Sandalwood Oil Factories of the plaintiff went to England and found that the 1st defendant's representative in England namely Mr.Mavlankar was guilty of misappropriation in regard to the proceeds of the sandalwood oil belonging to the plaintiff and sold in England. This defendant obtained a vague knowledge about such misappropriation only in February 1929 and not before and even then he was unable to obtain denifite particulars regarding the said misappropriation.

14. This defendant finds in paragraph 12 of the plaint statements to the effect that a complete confession was made by the European representative of the 1st defendant Company which showed that the receipts due to the Government were being continuously misappropriated for a long time past by the defendant company and its Directors and representatives and that portions of a sum of about £ 65,000/- belonging to the plaintiff were misappropriated by the agents of the 1st defendant company and that portions of the said amount had been utilised and misapplied by the Directors for the purposes of the various concerns referred to in the plaint and for meeting other liabilities for which the Directors were personally responsible. This defendant respectfully submits that the said allegations not specifying the particular person or persons who were guilty of misappropriation or misapplication and not specifying the amount or amounts of such misapplication or misappropriation, the time when and the manner in which the - misapplications or misappropriations are stated to have been

made and the concerns for which and the liabilities for which the moneys so misappropriated or misapplied have been utilised are not sufficient to raise a case of fraud against the defendants or any of them. This defendant further submits that the plaintiff is bound to give specific particulars in regard to the allegations in paragraph 12 of the plaint inclusive of the one contained in the last sentence thereof, giving the names of the Directors and the particulars of their fraudulent acts and the terms of the agreements alleged to have been violated and the benefit accrued to the Directors thereby. This defendant respectfully submits that this defendant had no knowledge of the details of the management by the 2nd defendant and the said M.L.Vardhamaniah who it now transpires conspired with Mr.Mavlankar to keep the other Directors of the company in complete ignorance of their actions. This defendant emphatically states that he has not been guilty of any act of fraud, misapplication or misappropriation of the funds of the plaintiff by the 1st defendant company and was in no way party ~~to~~ or privy to any such fraud misapplication or misappropriation committed by any other person or persons whatever.

15. In so far as it is alleged in paragraph 13 that the amounts realised by the sale of sandalwood oil were utilised by this defendant for his own purposes or misapplied by him in any manner whatever this defendant denies the same. If there have been any frauds, misappropriations or misapplications they were and must have been done by and between the 2nd defendant, Mr.M.L.Vardhamaniah and Mr.Mavlankar. This defendant was not a party or privy to the furnishing of false accounts if any to the Director or other officer of the plaintiff. This defendant believed and the conduct of the plaintiff and its officers who were in full possession of all the accounts and of all other relevant facts in going on with the business as usual made

this defendant believe that there was nothing wrong with the business or with the conduct of the persons in charge thereof. This defendant denies that the Directors were in the position of trustees to the plaintiff in any sense.

16. This defendant respectfully submits that the allegations in paragraph 14 of the plaint are irrelevant in as much as no relief has been asked on the basis of those allegations. If it is suggested that there was any misrepresentation made to the plaintiff by this defendant, this defendant denies that he made or permitted to be made any such misrepresentation. This defendant denies that at the time when the Essen Flour Company Ltd., applied for the agency that company was working at a heavy loss or that this defendant was aware that it was so working. In view of the infancy of the business, the losses were not (and were not believed by way of the Directors to be) of any serious magnitude and it was considered by all the Directors and share holders that the position of the company was bound to improve. This defendant further denies that he made or permitted to be made to the plaintiff that the 1st defendant company was in a flourishing condition or that he did so in order to secure the agency for the Company.

17. This defendant is unable to plead to paragraph 15 of the plaint on account of a total lack of particulars in regard to the general charges made therein. This defendant pleads ~~that and only~~ and can only plead that so far as he is aware he did not make or permit the making use of the moneys representing the proceeds of the Sandalwood Oil belonging to the plaintiff by the Directors for their own purposes or for meeting the liabilities for which he or the other Directors were personally responsible or for the use of any other company or companies. This defendant is unable to understand what acts or omissions the plaintiff has in mind when in paragraph 15 it refers to the gross and wilful neglect of and the dishonest and fraudulent conduct of defendants 3 and 4 and submits that

such a vague allegation is insufficient to form the basis of a legal plea. This defendant denies that he has been guilty of any of the acts charged or had knowledge that any moneys whether trust moneys or otherwise belonging to the plaintiff were being utilised for other purposes.

18. This defendant respectfully submits that the only cause of action which the plaintiff has is against the 1st defendant Company and none against this defendant. He and the other Directors do not owe any duty to the plaintiff who is a stranger, whatever their position and duty to the 1st defendant company may be. The gross and wilful neglect and the want of care and attention on the part of the Directors are even if true no ground for a stranger like the plaintiff seeking relief against the directors of a limited company. This defendant once again submits that no particulars have been given in the plaint of the active and fraudulent conduct of the Directors by which they are alleged to have caused the moneys belonging to the plaintiff to be misapplied or utilised in violation of the terms of the agreements. Such an averment of fraud cannot be sustained in Law.

19. This defendant states that the averments in paragraph 16 of the plaint to the effect that the Directors including defendants 3 and 4 deliberately took steps with the ulterior object of enabling Mr. Mavlankar to misappropriate and utilise the proceeds of the sandalwood oil are untrue. This defendant submits that the alteration of the articles of Association had to be and was made with the knowledge of the plaintiff for the purpose solely of enabling the 1st defendant company to perform its obligations under the contracts with the plaintiff. For the same purpose the Directors of the 1st defendant company authorised the 2nd defendant and the late Vardhamaniah and Mr. Mavlankar to operate upon the 1st defendant company's account with Coutts & Co., for the purpose and for the purpose only of transferring from that account to the account of the plaintiff moneys

duly and properly payable to the plaintiff on account of the sandalwood oil sales. The resolutions aforesaid were passed bonafide and with no ulterior object whatever and an innocent and bonafide act has been sought in the plaint to be converted into a fraudulent one. This defendant submits that there is utterly no basis for the sinister colour sought to be given to the resolutions aforesaid, but in any event the plaintiff has no right to complain.

20. With reference to the allegations in paragraph 17, this defendant submits that the conduct right through of defendant 3 and 4 was the conduct of business men who are entitled to rely upon the honesty and integrity of the officers of the company on whom they were entitled to rely and relied. . They were guilty of no wilful omission to do anything needful and the allegation that this defendant or to his knowledge any other defendant allowed things to go on as before with any fraudulent or dishonest object is wholly untrue. This defendant emphatically denies that he individually or along with other Directors actively or otherwise encouraged the misapplication of the sandalwood oil realisations for discharging the liabilities of any other concern or concerns for which he either solely or jointly with other or others was personally liable. This defendant further denies that he put pressure on the Managing and Governing Directors to pay off the liabilities knowing that the sandalwood oil moneys would necessarily be so utilised. This defendant states that such meetings of the Directors as were called for were regularly held and so far as he is aware there was no omission wilful or otherwise to do what was required of him or the other Directors at all. This defendant further denies that there has been any negligence gross or otherwise, or wilful default or fraudulent conduct on his behalf or on the part of any other Directors to his knowledge at any material times and he therefore cannot be made liable for the whole or any portion of the claim of the plaintiff.

21. This defendant denies that there has been any irregularity in regard to the meetings of the Directors or any material irregularity in regard to the requirements of law being complied with, with reference to the management of the company. If any event this defendant submits that the suggestion in paragraphs 17 and 18 of the plaint that the said irregularities were committed with the fraudulent idea of misleading the Government as to the company's financial position is utterly baseless.

22. This defendant denies the correctness of the allegation in paragraph 19 of the plaint and submits that the balance sheets of the company and the accounts thereof were always available to the plaintiff and copies of the same had been furnished to it. This defendant denies that the said concerns were carried on with the help of the sandalwood oil moneys or that there was anything in the balance sheets to make this defendant suspect that they could have been so carried on or that the company owed heavy sums to the plaintiff which it could not make good from the outstandings. This defendant further submits that in no event can this defendant be made liable to make good any loss which has been sustained by the plaintiff and further denies that he has been guilty of any breach of trust or fraud.

23. This defendant submits that from about February 1929 all the books and papers of the Company had been taken possession of by the plaintiff and it was only after permission for inspection was recently obtained from this Court that this defendant had had access to the same. The plaintiff and its officers have all along been in complete knowledge and possession of all that took place in the company, of all their dealings and of all their accounts. This defendant submits that he cannot be called upon to meet a case of fraud, misappropriation or misapplication of trust or other funds except upon a specific case and

on being given particulars of the acts charged. The plaintiff has been in error in thinking and submitting to the court that this defendant has or had any knowledge whatever of the frauds of the 2nd defendant and M.L. Vardhamanaiah except what he has been able to gather from the reports of the proceedings of the criminal case appearing in the newspapers since the institution of the criminal complaint, against the 2nd defendant.

24. This defendant does not admit the correctness of the account or any ~~xxx~~ items therein set forth in the Schedules A and B to the plaint and puts the plaintiff to strict proof thereof. As neither schedule A nor schedule B contains a specification of the amounts which according to the plaintiff have been misapplied or misappropriated in fraud of the plaintiff the plaint is materially defective. As no amount has been specified as having been misapplied or misappropriated by this defendant the plaintiff is not entitled to a decree against this defendant for the whole or any part of the amount claimed in the plaint.

25. This defendant further submits that the suit is bad for misjoinder of parties and causes of action.

26. This defendant therefore submits that the suit as a whole may be dismissed with costs.

Bangalore City
25th Jan. 1932.

3rd Defendant.

Advocate for 3rd Defendant.

I, the defendant abovenamed, do hereby declare that what is stated above is true to the best of my knowledge and belief.

Bangalore City
25th January 1932. }

3rd Defendant

I heard that the
2nd Dept Statement

filed on 29th
was sent by the

PA - Jpr has been
since received

The 2nd paragraph
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4/2

SUBJECT

Section

File No.

Serial No.

D of letter replied to

No

4408(3)

To

The Govt. Advocate

General and Revenue Secretariat

()

193

6/2/32

M^r Ray

Secy

I am directed

to return herewith copies of

the written statements filed by me

1st, 3rd and the 4th Defendants

O.S. 20/30-31 in the file of the Dist. Judge, B'lore (Govt vs the Esserflow Products Ltd), sent with your letter

no. 561 dated 26th Jan 1932.

A copy of the ~~case~~ statements filed by the 2nd Defendant on the 29th inst may kindly be sent for reference, and return early

List of enclosures

Copied by

I have etc

for Ch. Secy

Examined by

KD

IMMEDIATE AND CONFIDENTIAL.

GOVERNMENT ADVOCATE'S CHAMBERS,

PUBLIC OFFICES,

Bangalore, 10th February 1932.

Dear Mr. Madhava Rao.

Re: O.S.No.28/1930-31.

Referring to my D. O. letter No 34, dated the 17th December 1931, re documents still with the Sri Krishna-rajendra Mills, Ltd., Mysore. I write to inform you that I have not heard from the Director, Sandalwood Oil - Factory, yet, in the matter.

Mr. Lakshmipathaiya, who was in charge of some departments of the - Essenflour Products Co., and other allied concerns, also appears to have some papers in his possession, as he seems to continue in charge of those concerns yet, though only nominally.

As I should like to peruse the above records before preparing our reply statement, I shall arrange to go to Mysore for a couple of days and examine them myself. The Comptroller may also be kindly requested to send the Auditor (Mr. K. Natarajan) of his office, who was in charge of the work previously, to accompany me to Mysore in this connection.

Yours sincerely,



N. Madhava Rao, Esq., B.A., B.L.,
Chief Secretary to Government
BANGALORE

SUBJECT

Section

File No.

Serial No.

Diar No. of letter replied to

No

4492

To

The Compt. to G.

General and Revenue Secretariat

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Says in his DO letter no. 42 dated 6-10-78

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the District Court, Bangalore and deserves

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places

may kindly be instructed
at his disposal I am, Sir, Dear Sir,

to accompany him

you to kindly instruct her
Irene in this matter.

Nabharajan to accompany it

Advocate to Mysore I have 4

in this connection.

List of enclosures

Copied by

Examined by

GOVERNMENT OF MYSORE

ADDRESS FOR TELEGRAMS:
SANDAL
BANGALORE

SANDALWOOD OIL FACTORY

FORM USED: "BENTLEY'S"

Bangalore, 30th May 1931.

No. 5133
Enc.

Dear Sir,

With reference to your D.O. letter No.587/P dated 25th May 1931, conveying the orders of Government in regard to the institution of suits against the Mysore Development Syndicate and Asbestos Co., Ltd., for the recovery of amounts due by them to the Essenfleur Co., I write to state that before the institution of these suits a preliminary investigation of the accounts of the Essenfleur Co. is considered essential by Mr. Nageswara Iyer. I have addressed the Secretary to Government, Development Departments, in my letter No.5059 dated 25th May 1931 that the Comptroller to Government may be requested to place the services of an auditor with previous experience in auditing Commercial Accounts at my disposal for the purpose. I have also sent a copy of this letter to you in my No.5060 dated 25th May 1931, and have separately addressed the Comptroller to avoid delay. I request you also to move the Government on the matter.

All the Accounts of the Company are in the District Court at Mysore and I shall take needful action to get possession

of the accounts when I go to Mysore for the session of the Representative Assembly. Mr. Nageswara Iyer has also been requested to go to Mysore at the time.

Yours sincerely

Changanatha Iyer

Mr. P. Mahadevayya, B.A., B.L.,
Legal Remembrancer and Secretary
to Government, Law Department.

A P Nagesvara Iyer, B.A., B.L.,
Advocate

Chickpet, Bangalore City,
Dated the 18th June 1931.

IMMEDIATE AND CONFIDENTIAL

Dear Sir,

I herewith enclose a copy of the plaint for the approval of Government to be filed against the Mysore Development -- Syndicate by the Director of Sandalwood Oil Factory, as -- Receiver of the Essenfleur Products Co., Ltd. The plaint against the Mysore Asbestos Co., Ltd., will be on the same lines.

In continuation of my discussion with you last week about the accounts of the Essenfleur Products Co., Ltd., with the Asbestos Co., Ltd., a large sum viz., Rs 1,28,500/- was transferred to a general loan account from the present account on 30-6-26. The result was that the Essenfleur - Products Co., Ltd owed this amount to the Asbestos Co., Ltd. while the Asbestos Co., Ltd., owed Rs 79,537-2-0 to the -- Essenfleur Products Co., Ltd. The two accounts have been kept separate right through.

Later, during 1926-27, a sum of Rs One Lakh was paid by the Essenfleur Products Co., Ltd to the Asbestos Co., Ltd. with the result that its liability was reduced to that -- extent, while the liability of the Asbestos to the Essenfleur Products Co., continued practically as before.

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cant.

At the fag end of the accounts - it is dated 30-6-28 - though the entries must have been made later, the entries relating to the repayment of Rs One Lakh have been reversed thus increasing its indebtedness by Rs One Lakh. They are made without any authority and they seem to be merely -- nominal, made with the fraudulent object of making out - that the Essenfleur Products Co., Ltd., had no assets.

These reversing entries are not found in the accounts of Asbestos Co., Ltd. If the entries were genuine and bona-fide, we should have found them in these accounts - also. As it is a separate loan account, any claim of the Asbestos may also be barred by time.

It is unnecessary to discuss further details here, as I explained them in person by referring to the accounts last week. A suit against the Asbestos may also, under the circumstances, be filed.

Yours sincerely,

P. Mahadevayya

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Law Departments, B a n g a l o r e.

SUBJECT.....

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Section

File No.

Copy No. of letter replied to.....

Serial No.

No.

7900

General and Revenue Secretariat

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the

193

To

A. R. Nageswara Reddy

Joint Advocate
Bangalore

Date of issue.....

22/6/33

Signed by.....

M. R. M.

or
→

I am directed to

have herewith duly approved

Government the copy of

plaint to be filed in

proposed suit against

poro Development Syndicate

List of enclosures.....

sent with your letter of

the 18th instant. and he

request ^{you} to take immediate

action to institute the

suits both against the

Copied by.....

15/6/33

Examined by.....

Development Syndicate as well

as the Asbestos Co. and return

taken in the matter may be reported to

fact in due course of time

11-2-1932.

The Comptroller to Government.

The Government Advocate says in his D.O. letter No.42 dated 10th February 1932 that he intends going to Mysore for a couple of days to examine certain records relating to the Sandal oil civil suit and desires that the services of the auditor (Mr.K.Natarajan) of your office may kindly be placed at his disposal. I am to request you to kindly instruct Mr. Natarajan to accompany the Government Advocate to Mysore in this connection.

I have the honour to be,
Sir,
Your most obedient servant,


 Chief Secretary to Government.

SUBJECT

No. of letter replied to

General and Revenue Secretariat

the

193

of issue

ed by

enclosures

Copied by

Examined by

Section

File No.

Serial No.

No

To

Sir

With ref to your

Do letter No ⁴² ~~302~~ of 10/2/1930

Re OS No 28/1930-31 / Landal
and civil suit, I am directed

to forward herewith a copy of
the letter addressed to the Comptroller
to Govt in the matter

34362361
P 8361

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore.....30th January 1932

In reply please refer to
No.....576.....
Tel. Address.....
"JURIST," Bangalore.

From

The Government Advocate
in Mysore, Bangalore.

Law
CHIEF SECRETARY
7/1/32
2 FEB. 1932

To

The Chief Secretary to the Govt.
of H. H. the Maharaja of Mysore.
Bangalore

Sir,

In continuation of this office letter - No.561, dated the 26th instant, I have the honor to state that O. S. No. 28 of 1930-31 on the file of the District Judge, Bangalore Division, (The Government of Mysore, versus. The Essenflour Products Co., ~~xxxxx~~ and others) came on for hearing on the 29th instant, when the second Defendant (Mr. B. Sitarachar) filed his Written Statement. The case now stands adjourned to the 9th February 1932, for the filing of the Written statements by Defendants 5 to 7.

2. The copy of the Written statement filed by the second defendant is enclosed herewith - for information and kind return when done with.

I have the honor to be,
Sir,
Your most obedient servant,

M. Nagaswami
Government Advocate

In the Court of the District Judge at Mangalore.

Original Suit No. 28 of 1930-31.

The Government of Mysore

Plaintiff.

V S.

The Essenfleur Products Co.,
and others.

Defendants.

Under Order VIII Rule 1 of the Code of Civil Procedure

The 2nd defendant B. Sitaramachar begs to
state as follows:-

1. The Plaintiff's claim against this defendant is
not sustainable either on facts or in law.

2. The allegation in para 2 of the plaint
that this defendant was the Managing Director
of the Essenfleur Products Co., Ltd., ever since
its foundation is not correct. This defendant
was employed as Assistant Director of Industries
and Commerce under the Government of Mysore when
the above said Company was started. Some time
after namely in or about June 1920 this defen-
dant's services were applied for by the Mysore
Development Syndicate which was the parent in-
stitution of the Mysore Asbestos products Ltd,
and Essenfleur Products Ltd., In October 1920
this defendant retired from Government service
totally to be a whole-time officer under the
Company. The Government retired this defendant
on a pension though he did not by them become
entitled to such pension, and even without this
defendant's application. because the Syndicate
applied to the Government for the services of the
defendant who had then bright prospects under the

Government. It was in 1921 that this defendant was appointed as the Managing director of the Essence-fleur Products Ltd., and Asbestos Products Ltd., This defendant was then also taken as a member and Secretary of the said Syndicate. In the said three companies this defendant was granted 10% of the shares and 10% of the profits without this defendant contributing any capital and without any liability on his part to finance any of these companies. This these concessions were granted to this defendant purely as remuneration for the services to be rendered by him in promoting the interests of the said concerns, canvassing and developing their business etc. Plaintiff has always been fully aware of the position of this defendant in the abovesaid three concerns.

3. This defendant begs to submit that the position and function allotted to this defendant in the Company were such that he could not engage himself in details pertaining to accounts or the office routine but was to be in charge of the several operations and processes relating to the industries concerned. This defendant submits this fact as essential in considering the case as against this defendant.

4. The allegations in para 7 of the plaint do not accurately represent the transaction that was entered into between the plaintiff and the 1st defendant. The terms of business are stated in the written agreements dated 10-6-1925 and 9-12-1926.

5. The terms of the transaction as embodied in the said documents dated 10-6-1925 and 9-1-26

will have to be referred to to determine what exactly was the relationship between the plaintiff and the 1st defendant at the various stages of the transaction.

6. The contract referred to in para 7 of the plaint was only between the plaintiff and the 1st defendant and not either directly or indirectly between the plaintiff and the defendants 2 to 7. If the plaintiff's contention is that by reason of the fact that the 1st defendant was a party to the contract the directors individually also became parties to the contract, then the shareholders also must be held to be parties to the contract and the suit is bad for non-joinder of share-holders as parties to the suit.

7. In any event this defendant cannot be individually a party to the contract.

8. On the allegations made in the plaint there is no cause of action against the defendants 2 to 7 personally.

9. In any view the plaintiff is not entitled to go beyond the strict terms of a written contract and cannot vary or add to the terms of the said contract.

10. The allegations in para 8 of the plaint relating to the delay in execution of the agreement till 10-6-1925 are put in a language of needless and unwarranted insinuation while the plaintiff is fully aware of the reasons for the delay for which the plaintiff's officers themselves were greatly responsible.

11. It is not correct to say that the terms and conditions on which the transaction between the plaintiff and the 1st defendant was carried on between 1-9-1923 and 10-6-1925 were the same as those that are embodied in the agreement dated 10-6-1925.

12. The terms set forth in para 9 of the plaint are substantially correct but the conclusion drawn from the said terms viz. "that the defendants 1 to 4 and the late Mr. Vardhammiah were trustees as well for the Government of Mysore in this matter" is not tenable either on the facts or in law.

13. This defendant further begs to submit that the plaintiff was always waiving every one of those terms, so much so that the terms were never acted upon and were never treated as the essence of the contract by the plaintiff.

14. In any event this defendant individually cannot be held to be a trustee for the Government.

15. It is true that Mr. Mavlanker was doing business in Europe on behalf of the Essenfleur products Ltd., as also of the Mysore Asbestos Products Ltd., and the Mysore Development Syndicate from a time long anterior to the contract between the plaintiff and the 1st defendant. But in relation to the Sandal Oil sales covered by the said contract the position of the late Mr. Mavlanker was different. He was an agent employed in the natural course of business to carry on the sales of sandal oil in Europe. This was inevitable in the very nature of the business and the 1st defendant had complete authority by the very nature of the business which it undertook to employ an agent who became, with the

the knowledge and consent of the plaintiff. the plaintiff's agent. The plaintiff was consigning oil directly to Mr. Mavalanker and was getting accounts, reports etc., directly from him though the ~~xxxx~~ 1st defendant were also in touch with the accounts and reports etc., For frauds and misappropriations committed by Mr. Mavalanker neither the 1st defendant nor this defendant is liable

16. The allegations in para 11 of the plaint are clothed in a vague, passive voice evidently because the plaintiff knows that no false or frivolous explanations were given by the 1st defendant. It is unfortunately true that Mr. Mavalanker was playing false both with money and accounts and the defendants, particularly this defendant, were unhappy victims in a greater degree than even the plaintiff.

17. The allegations in para 12 of the plaint are wholly opposed to actual facts. The auditing officer referred to made a report which showed that misappropriations were made by Mr. Mavalanker and that his accounts also showed the same. Mr. Mavalanker was from that moment continuously confessing that he misappropriated the sums and he said so even as a prosecution witness in the Criminal case launched against this defendant.

18. In any event it has been clearly made out to the knowledge of the plaintiff that his defendant did not appropriate to his own use even a farthing of the amount referred to in para 12 of the plaint assuming the figure to be correct which correctness this defendant does not admit.

19. The allegations of fraud and violation of contract referred to in para 12 of the plaint are untrue.

20. The allegations in para 13 again relating to trust, Violation of trust, fraud etc., are not correct. The accounts were in all furnished by Mr. Movlanker both to the plaintiff's officers and to the 1st defendant and ~~both~~ both were accepting the same in the belief that they were correct.

21. It is true that the plaintiff took up the business in a high-handed manner at a time when this defendant was under arrest and this defendant is not aware of the state of things when the plaintiff took up management in a high handed manner. The plaintiff is bound to render a full and accurate accounts of their management both to the 1st defendant and to this defendant and to account for all losses and damages consequent on their assumption of management.

22. The allegations in para 14 of the plaint are untrue and unwarranted. Assuming the same to be true they only show the carelessness of the plaintiff and this ~~defendant~~ defendant is in no way responsible for any representation made to him by others or believed by the plaintiff. This ~~defendant~~ defendant submits that he made no such representation to the plaintiff. The plaintiff had every facility to know the status and credit of the 1st defendant with whom the plaintiff was entering into the contract and acted with open eyes.

23. The allegations in para 15 of the plaint are untrue. It has been proved beyond doubt to the satisfaction of the plaintiff that this defendant did not make use of a single pie for his own purpose. It was admitted by the Government Advocate on behalf.

on behalf of the plaintiff in the course of the Criminal trial both in the original court and the appellate court that this defendant did not appropriate a single pie for his personal use out of any money due to the Government. It was further admitted by the same Advocate and also proved and found beyond doubt that this defendant acted throughout in good faith and with the best of motives and never entertained any idea of defrauding the plaintiff.

24. In any event this defendant is in no way answerable for the facts of others.

25. The allegations in para 16 of the plaint are all untrue. It is true that by a resolution of the company the directors authorised the late Mr. Vardhamaniah, this defendant and the late Mr. Javalanker to operate on the Sandal oil accounts with Messrs. Coutts & Co. The insinuations and suggestions made on this plain, simple, innocent and open act are wholly unwarranted and untrue to the knowledge of the plaintiff

26. It is surprising that such allegations should be made by the Government plaintiff.

27. As a matter of fact this defendant never operated on the back account though as a mere emergency measure more than one was given the authority.

28. The allegations in para 17 of the plaint are untrue and frivolous. The Directors of the company were all closely watching and guiding the affairs of the company. Further the allegations

in para 17 of the plaint are not such as the plaintiff is entitled to make nor are they relevant to the present enquiry. It is further untenable in law that the conduct of directors inter-se and in relation to the their concern or concerns has any bearing on the rights or claims, if any, of the plaintiff as against the 1st defendant.

29. The allegations in para 18 of the plaint are vague, indefinite and untrue.

30. The allegations in para 19 of the plaint are besides being inaccurate and untrue strange and novel and the proposition of law as to personal liability is wholly unsound.

31. In any event the position of this defendant in the company is such that he is in no way liable personally to any creditors of the 1st defendant including plaintiff.

32. The contentions in para 21 of the plaint are unsound and untenable. The arbitration clause covers the dispute in this suit. It is further not left to the plaintiff to choose this forum and the reason assigned thereto, is likewise unsound and untenable in law and on facts as well.

33. The cause of action does not arise on an audit report but on the contract or breach of contract. Thus it arose either in Mysore or in London and not within the jurisdiction of this Hon'ble Court.

34. No relief can in any event be granted against this defendant personally as prayed for in para 23 of the plaint.

35. The sum sued for is not correct.

36. Though the plaintiff knew from 1920 that Mr. Mavlanker had misappropriated a large amount yet he was taken into the confidence of the plaintiff and the plaintiff ~~xxxxxx~~ instead of proceeding against him forthwith indulged in an unfair and iniquitous prosecution against this defendant and failed to recover the amount by proper steps against Mr. Mavlanker. Further by the arrest and detention in jail of this defendant for a long time and the subsequent incarceration which came to an end only in September 1930 the plaintiff prevented this defendant from taking any action against the said Mr. Mavlanker on his estate and from recovering the amount misappropriated by him. Hence also this defendant is not liable.

36. This defendant further begs to submit that Mr. Mavlanker even undertook to make good to the Government, ~~xxxxxxx~~ all the money which he misappropriated and was carrying on negotiations with the Government, when he was in Mysore for some time when this defendant was under trial. The Government for obvious reasons has not disclosed the particulars of the same. Under the aforesaid circumstances also the plaintiff is estopped from making any claim against this defendant in this suit.

38. This defendant further learns and believes the same to be true that the negotiations with Mr. Mavlanker and his legal representatives -- in regard to the amounts misappropriated by Mr. Mavlanker did materialise. The defendants herein are kept ignorant of what ---

of what thus transpired. The plaintiff is bound to make a full disclosure of the said arrangement and account for the amounts received.

39. The defendant further begs to submit that by the plaintiff dealing with Mavlanker and his legal representatives directly at that stage by such arrangements has ~~prejudiced~~ prejudiced the rights of the defendants and is estopped from inattaining the su

40. Upon the facts within the knowledge of the plaintiff and in law the plaintiff should have impleaded the legal representatives of Mr Mavlanker as defendants in this suit and the suit is bad for non-joinder of parties even on this ground.

41. This defendant begs to submit that the plaintiff had no right to attach before judgment the share of this defendant in the three companies, the sum of about ₹ 1300/- due to this defendant from the estate of Mavlanker on account sale of Mica and insurance amounts in the Oriental Government Security Assurance Company and the Mysore Government Insurance Department. The plaintiff is bound to pay compensation of ₹.1000/- for the said illegal attachment besides the raising of the attachments and prohibitory orders.

42. Allegations of fraud were very liberally and extravagantly indulged in in the course of the plaintiff without giving particulars of fraud as required by law. Such allegations ought therefore to be expunged from the plaint.

43. Upon the allegation of the plaintiff that all the three firms viz. Mysore Development Syndicate, Asbestos and Essentfeur were carried on as one concern the plaintiff ought to have made all --

the partners, directors and share holders of all the firms as parties to the suit

44. Upon the terms of the contract and upon the dealings this defendant submits that nothing is due to the plaintiff from the defendants on taking accounts on the true basis as regards the relationship between the plaintiff and the 1st defendant.

45. This defendant does not admit any of the allegations of the plaintiff's plaint not expressly admitted herein.

46. This defendant begs to submit that the suit is bad for mis-joinder of causes of action and of parties.

Wherefore the 2nd defendant prays humbly that the suit as against him may be dismissed with costs.

Bangalore City

29th Jan. 1932.

Advocate for 2nd Defendant.

I the 2nd defendant abovenamed do hereby declare that what is stated above is true to the best of my knowledge.

Bangalore City.)

29th Jan. 1932.)

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE.

O.S. No. 28 of 1930 - 31.

Plaintiff:-

Government.

Defendants:-

Essenriour Products.Ltd
and others.

under Order Rule and Section 151 of the Code of Civil Procedure, the 5th defendant, above-named begs to state as follows:-

1. That this defendant attained his majority just ten months ago and has just been assuming charge of the affairs of the family.

2. That on his consenting to be the Guardian as litem for his minor Step-brothers, defendants 6 and 7, he has been appointed as such guardian and is continuing to represent them.

3. But since he consented to be the Guardian of the minors certain events have transpired which make it difficult for him to continue to act as -- guardian for them, though he is willing and though he thinks that it is necessary in the interests of the Joint familyestate that he should continue to represent the said minors.

4. The minor 7th defendant, represented by his mother Sreemathi Kanthamma and maternal uncle Rajanna, has filed a suit for partition in forma pauperis in 22 of 1931-32 on the file of the District Judge, Mysore and so this defendant cannot continue to

the said minors or whether they intend making other arrangements for their defence.

Wherefore, this defendant prays that this Hon'ble Court be pleased to order the issue of notices to Sri Kanthamma and Mr. Rajanna, the next friends of the 7th defendant and to Mr. H.A. Bommaniah of Hassan, the Guardian of the 6th defendant.

Bangalore,

29th January/1952.

5th Defendant.

I, the 5th defendant above named do hereby declare that what is stated above is true to the best of my knowledge, information and belief---

represent the minors unless their next friends and guardians give their express consent to all to continue to represent them in this suit.

5. That if he cannot obtain such consent, this Hon'ble Court will have to appoint another person as guardian in his stead.

6. That it is also in the interests of the plaintiffs themselves, that all the minors in this suit should be properly represented or otherwise several complications may arise subsequently

7. That therefore it is necessary before this defendant can act on behalf of his step-brothers, that notices should be issued to the guardians of the said minors to know whether this defendant can continue to represent the said minors or whether they intend making other arrangements for their defence.

Wherefore, this defendant prays that this Hon'ble Court be pleased to order the issue of notices to Sri Kanthamma and Mr. Rajanna, the next friends of the 7th defendant and to Mr. H. A. Bommaniah of Hassan, the Guardian of the 6th defendant.

Bangalore,

29th January 1932.

th Defendant

I, the 5th defendant above named do hereby declare that that is stated above is true to the best of my knowledge information and belief.

Bangalore,

29th January 1932.

SUBJECT

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to

No.

15055 (2,

To

The Director of S. O. I.

Sir,

General and Revenue Secretariat

()

the

193

I am directed

to forward herewith for your

Date of issue

27/2/32

information and reference, the
written statements filed by the

Signed by

M. S. M.

2nd and 3rd defendants in
O.S. no. 13031, on the file of the
Dist. Judge, Calcutta (first is
the Esplanade Products Co. Ltd.)
and received from the Govt.
Advocate with his letter no. 576
dated 30.1.32

List of enclosures

Copied by

I have etc
M. S. M. for Dev. Secy

SUBJECT

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to

No.

5052 (2)

To

The Gov. Advo.

Sir,

General and Revenue Secretariat

()

the

193

I am directed

Date of issue

27/2/32

To return license to W. Saker
of the 2nd and 5th Depen
dents in O.S. 28/30.31 on the file

Signed by

M. Roy

of the Dist. Office. To me

Just of Mysore as the Essen
flour products LTD) sent with
your letter no 576 dated 30.1.32

I have etc

15D 24/2 M. Roy for Dev. Secy

List of enclosures

Copied by

Examined by

SUBJECT

.....

.....

Section

File No.

Serial No.

Diary No. of letter replied to

No.

5261 137

To

The Director of S. O. I.

Sr.

General and Revenue Secretariat

()

the

193

Date of issue

9/3/32

27.2.32

I am directed to

Signed by

M. N. M.

forward known for information
and reference copies of the written statements

filed by 3 & dependants
in O.S. 28/30-31 on the file of the

District. Andhra Pradesh (see in Enclosure
Products Ltd)

List of enclosures

150
8/3

1004

13/1

I have etc

Dear Sir

Copied by

1004

Examined by

In reply please refer to
No. 673

Tel. Address :—
"JURIST," Bangalore.

403/837
OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE.

Bangalore.....15th March 1932..

From

The Government Advocate
in Mysore, BANGALORE.

To

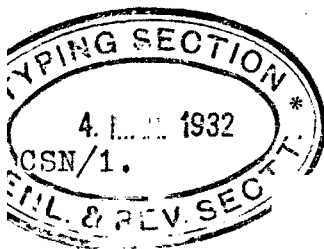
The Secretary to the Govt.,
of H.H.The Maharaja of Mysore,
Development Department, BANGALORE.

Sir,

I have the honor to state that Original
Suit No.28 of 1930-31 on the file of the District
Judge, Bangalore Division, (The Govt. of Mysore Vs.
The Essenflour Products Co., Ltd.,) which was posted
for hearing to this day (29-2-1932) stands adjourned
to the 15th March 1932.

Personal.

I have the honor to be,
Sir,
Your most obedient servant,



M. Magasam 2/3
Government Advocate.
M

Routine Notes.

To be used only for notes, requisitions, etc., not intended for permanent record.

WD. 0562--GPB-2500--25-7-22.

Routine Notes.

4537

90

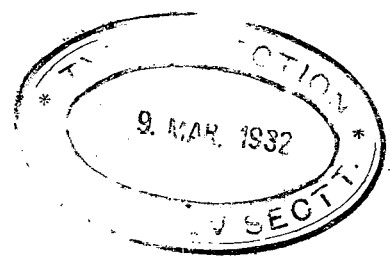
[To be used only for notes, requisitions, etc., not intended for permanent record.]
WD. 0562-GPB-2500-25-7-21

3 sets of Typed copies are present
Dfr to the Dir of S.O.T. is ^{sent} for

2/1
TSD
8/2

Issue
AMP
8

For the
information
please let
me know if
desired &
carefully copy





SANDALWOOD OIL FACTORY.

Bangalore, 1st March 1932.

No.

4714

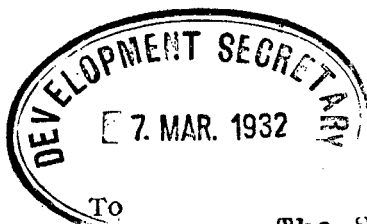
N. RAMA RAO ESQ., B.A., B.L.,

FROM

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
~~G. RANGANATHA RAO SAHIB, ESQ., B.A., B.L.,~~

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE

BANGALORE.



To

The Secretary to the Government of Mysore,
Development Department, Bangalore.

Sir,

I have the honour to acknowledge receipt of your letter no. 5055 dated 27th February 1932, enclosing for my information and reference copy of the written statements filed by the 2nd and (3rd) ^{5th} defendants in O.S. 28/30-31 on the file of the District Judge, Bangalore.

I have the honour to be

Sir,

Your most obedient servant,

DIRECTOR.

N. R.



No. 4855

FROM

N. RAMA RAO ESQ., B.A., B.L.,
~~CHANGANATHA RAO SAHIB BSOXBAKEX~~

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE,

BANGALOR



To

The Secretary to the Government of Mysore,
Development Department, BANGALORE.

Sir,

I have the honour to acknowledge receipt of your letter No. P.5361/3 dated 9th March 1932, enclosing copies of written statements filed by 1st, 3rd and 4th defendants in O.S. 28/30-31 on the file of the District Judge Bangalore (Government vs. Essenfleur Products Ltd.)

I have the honour to be,

Sir,

Your most obedient servant,

DIRECTOR.

nm

4222731
P112

SANDALWOOD OIL FACTORY

Bangalore, 10th March 1932.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

In reply please refer to

No. 324

Tel. Address :—

"JURIST," Bangalore.

Bangalore....19th..November.....1952.

FROM

A. R. Nagesvara Iyer, Esq., B.A., B.L.,
K.S.K.V.N.R.N.A.B.A.I.Y.E.R.E.S.Q.X.M.A.X.B.L.

GOVERNMENT ADVOCATE IN MYSORE,

BANGALORE

To

OFFICE OF THE

FIRST MC

INCIL

25 NOV. 1932

No. 4309

The General Secretary to the Govt.

of H. H. The Maharaja of Mysore.

BANGALORE

SECRETARY

NOV. 1937
SIR, *Law*

I have the honor to forward herewith, for the information of Government, a copy of the reply proposed to be filed on the 21st instant, in Original Suit No. 28 of 1930-31 (The Government of Mysore VS. The Essenflour Products Co., Ltd., & others) on the file of the District Judge, Bangalore.

file of the Dist
-RAL. SECRETARY
24 NOV. 19--

I have the honor to be,

Sir,

Your most obedient servant,

Magnum
Government Advocate.

20/6/22 ✓
174 24/11

~~Government~~ Advocate.

Sub

143 ✓ 25/11
C. Apple

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE.

Original Suit No. 28 of 1930-31.

The Government of Mysore.

Plaintiff.

-VS-

The Essenflour Products
Co., Ltd., and others.

Defendants.

Reply to the Statement of the 1st Defendant:-

1. The first defendant while denying the correctness of the statement of accounts attached to the plaint has not stated how they are not correct. Those statements were submitted to Government by the 1st defendant and they are - binding on it. That the 1st defendant is not liable for the suit claim is untenable.

2. That Mr. Mavlankar was appointed agent of the 1st Defdt. with the knowledge of the -
tiff and with the knowledge of its Officers is not true.

3. The Plaintiff is not aware of the other allegations in para 3(a) of the written statement. The Plaintiff does not admit the allegations in the Sub Clauses of the said para. It is false that this Defdt. had no complaint from the Pltff.

until February 1929, nor is it a fact that the Plaintiff took possession of all the assets and business of this Defendant in February 1929.

4. The allegations in para 4 are false. This Defdt. in collusion and in connivance with Mr. Havlankar began from the very beginning to mis-appropriate Government monies, and fraudulently concealed the fact from the knowledge of the Plaintiff. Further as the 1st Defdt. was liable to Government for the monies in question, and as the Plaintiff had nothing to do with their agent, the contention raised in para 4 is untenable, and the allegations therein are false.

5. The allegations in Paras 6, 7 and 8 are false. That the Plaintiff took possession of all the books and papers etc., is not correct. The Police in the course of the prosecution of the Managing Director of the 1st Defdt. Company took possession of necessary papers for the Criminal Case. This defendant's agent voluntarily paid some amount to the Plaintiff which is given credit for in the plaint. The Plaintiff put an end to the contract on account of the fraud of the defendant and on account of the very heavy amounts mis-appropriated by it and took over the management of the Sandal Oil business into its own hands.

6. The allegations in paras 10, 11 and 12 are false. Whatever amounts have been recovered

by the Plaintiff towards the 11 sold by the first Defdt. is credited to it and that has nothing to do with the amount now in suit, which has been misappropriated by the 1st Defdt. and is now being realised from the customers.

7. The allegations in paras 14 and 15 are also false

8. The other allegations not expressly admitted in this reply and inconsistent with those in the plaint are not true.

REPLY TO THE STATEMENT OF THE
SECOND DEFENDANT.

9. The Plaintiff does not admit the allegations in paras 3 and 6 of the statement. The Directors were responsible for the management of the Company and for reasons stated in the Plaint they are responsible for the suit claim. The allegations in para 7 of the Plaint are correct.

The contentions in paras 8 and 9 are untenable and the allegations in para 10 are false.

11. The Plaintiff does not admit the allegations in paras 11 to 14 of the statement.

12. The allegations in para 15 are not true, and Mr. Mavlanekar was neither in law nor in fact the Plaintiff's agent.

13. The allegations in paras 16 to 20 are not true. This Defdt. in collusion Mavalankar and with his connivance misappropriated

large amounts and this defendant began the very first act of mis-appropriation and through out took active steps to conceal his fraud from the Plaintiff and it was only discovered by Government at a late stage in spite of the efforts of this defendant to conceal it. The accounts furnished by Mr. Cavalanhar were so done at the instance of this Defdt. and the allegations in para 20 are not true.

14. The allegations in para 21 are answered in reply to the first defendant's statement.

15. The allegations in para 22 are false. This Defdt. gave false explanations deliberately in order to conceal his fraud and mislead the Plaintiff. This Defdt. seems to forget that the Criminal Case to which reference is made in para 23 related only to one item. This Defdt. has misappropriated several sums of money for his own purposes also. There was not only no good faith but there was actual fraud on his part throughout.

16. The allegations in paras 24 to 30 are false and frivolous and it is really surprising how in the light of the continued fraud on the part of this Defdt. he gives expression to feelings of surprise regarding the allegations made by the Plaintiff

17. The contentions in paras 31 to 34 are not tenable and the allegations therein are not true.

18. While stating that the sum sued for is not correct, this Deedt. has not stated how it is not correct.

The allegations in para 36 are false and frivolous.

20. The allegations in paras 37 to 39 are not true and the contentions therein are not tenable.

21. The legal representatives of Mr. Mavalankar are not proper parties to this suit. The attachments referred to in para 41 are quite legal and this Deedt. has suffered no damage nor is he entitled to claim any.

22. The contentions raised in para 42 to 44 are altogether frivolous. There is also no misjoinder of any sort.

23. The other allegations in this Deedt.'s statement are false.

REPLY TO THE THIRD DEFENDA

24. The allegations in paras 4 and 5 and the earlier portion of para 6 do not call for any reply. That the management was entrusted to the 2nd Deedt. and Mr. Vardhamanayya to the knowledge of all parties is not correct, nor is it a fact that the Plaintiff took possession and control of the Company etc.. It only took over the management of the Sandal Oil Business. The Plaintiff does not want to

want to say anything against the honour and probity of the 2nd Defdt. or of Mr. Vardhamanayya referred to in para 7, nor does the plaintiff want to say anything of the other defendants as it does not seem to be necessary for purposes of the case. Defendants 3 and 4 who were Directors of the concern were also taking active part in the business of the Company, and they were parties to the fraud and were fully aware of the misappropriations of the Sandal Oil moneys belonging to Govt.

25. The contentions in para 8 are all untenable.

26. The allegations in para 10 are false as also those in paras 11 and 12.

27. The allegation in para 13 that those defendants became aware of the fraud or misappropriation only in February 1929 is false.

28. The allegations in paras 14, 15 and 16 are not true. The necessary particulars have been fully furnished in the plaint and the allegations in para 17 that he is unable to plead to para 15 of the plaint is only a cloak to avoid making any statements at this stage. The necessary particulars are fully stated in the Plaint

29. The contentions in para 18 are untenable. The Directors were aware that their concerns were hopelessly failing and tried to

benefit

benefit themselves at the expense of Government and freely utilised the Government monies for their purposes as well as for the purposes of their -- companies, without any ~~sort of~~ regard for the agreement between the Plaintiff and the 1st Defendant.

30. The allegations that the statements in the Plaintiff have a sinister colour is altogether false and frivolous.

31. The allegations in paras 20, 21 and 22 are not true.

32. The statements in para 23 are answered in reply to the 1st Defendant's statement and the allegations therein are merely frivolous, as all the defendants were given full facilities for the inspection of all their documents. Further the documents belong to themselves with which they were fully acquainted.

33. The allegations in para 24 are false and the contentions therein are untenable.

REPLY TO THE 4th DEFENDANT'S
STATEMENT.

34. Most of the allegations in this statement are answered in reply to the statement of the other defendants.

35. The other allegations in the statement Defendants 3 and 4 not expressly admitted in

this reply and inconsistent with those in the
Plaint are false. All the defendants are -
therefore liable for the suit claim.

Bangalore.

21st November 1932.

Director of Sandalwood
Oil Factory.

I, H. Rama Rao, Director, Sandalwood Oil
Factory in Mysore, do hereby declare that what
is stated above is true to the best of my -
knowledge, information and belief.

Director of Sandalwood
Oil Factory.

Copy
M. K. Aggarwal
Government Advocate.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore...13th December.....1932.

In reply please refer to

429
Tel. Address:—
"JURIST." Bangalore.

FROM

A. R. Nagesvara Iyer, Esq., B.A., B.L.
~~XXXXXX SHANKARANKAR XXXX XXXX XXXX XXXX XXXX~~

GOVERNMENT ADVOCATE IN MYSORE,

BANGALORE.

To
P.

SECRET

The General Secretary to the Govt.

14 DEC. 1932 of H. The Maharaja of Mysore,
BANGALORE.

No. 120.

SIR,

I have the honor to state that Original Suit No.28/1930-31 on the file of the Dist. Judge, Bangalore (Govt. of Mysore VS. The Essenflour Products Co., Ltd.,) which was posted for hearing to the 12th instant stands - Adjourned to the 9th January 1933 for report of the - settlement of the claim as against the sons of the late Mr. Vardhamaniah.

2. The Reply Statement (a copy of which was sent to you with my letter No.364 dated 29-11-1932) proposed

to be filed in the case will be duly filed
after the said settlement is form
reported to Court.

I have the honor to be.
Sir,
Your most obedient servant,

McGregor
Government Advocate.

No...

Del. Address

Bangalore 27th February 1923.

FROM

~~A. R. Nagesvara Iyer, Esq., B.A., B.L.,~~
~~K. S. K. N. K. R. A. N. R. A. T. N. A. R. A. O. Esq., M.A., B.A.,~~

GOVERNMENT ADVOCATE IN MYSORE,

BANGALOR

To

28 FEB. 1960

NR Low

The General Secretaries to the Govt.,
of H. H. the Maharaja of Mysore,
Bangalore.

Re: O. S. No. 28/1930-31 on the file of the District Judge, Bangalore Division, (The Government of Mysore, versus. The Essenflour Products Ltd.,)

I have the honor to forward herewith, for the information of Government a copy of the application filed by Mr. B. Sitaramachar, the second defendant in the above case, for raising the order of attachment (before Judgment) obtained by Government in respect of his Life Insurance Policy in the Official Branch, on the ground that

under

2.

under the rules in force, the said policy is beyond the jurisdiction of the Civil Courts for - purposes of attachment. I, therefore, request you to kindly let me know early, if the said application has to be opposed and if so, on what grounds. According to section 66~~4~~, clause ¹/₁ of the Code of Civil Procedure, such amounts are not liable to be attached and I should like to know if Government have reserved any rights on such policies when any amount is due to them from the - assured. The application will come up for hearing on the 10th March 1933.

I have the honor to be,
Sir,
Your most obedient servant,

M. Magasani
Government Advocate.

In the Court of the District Judge, Bangalore.

Original Suit No. 28 of 1930-31.

Plaintiff.

Defendant.

The Government of
Mysore.

vs.

2. B. Sitaramacharya

Under Order 38, rule 6 (2), and Section 151
of the Civil Procedure Code,

Defendant No. 2 begs to state as follows:-

1. Plaintiff has, under an ex-parte order obtained the attachment before judgment in respect of this - Defendant's Mysore State Life Insurance Policy, Fully paid up No. 59.

2. The attachment in question is obviously illegal and the policy is beyond the jurisdiction of the Civil Courts especially for purposes of attachment under the rules relating to the Policy.

3. It is essential in the interests of justice to raise the attachment now in force as immediately as possible.

Wherefore, the defendant prays that this Hon'ble Court may be pleased to order accordingly.

Bangalore City,
Dated 30th Nov. 1931.

Defendant . 2.

Verification.

I, the defendant No. 2 abovenamed hereby declare that what is stated above is true to the best of my knowledge.

Bangalore City,
Dated 30th Nov. 1931.

Defendant No. 2.

A copy of this Petition has been served on Plaintiff's Advocate.

Copy.
M. K. S. S. S.
Government Advocate

In reply please refer to
No. 900/m.m.

6127/32
OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 24th May 1933.

25th

FROM

A. R. NAGESVARA IYER, Esq., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore;
BANGALORE.

25 MAY 1933
N. 900

SIR,

Re: Original Suit No. 28 of 1930-31 on the file
of the Dist. Judge, Bangalore Dvn.,
(Govt. VS. The Essenflour Products Co., Ltd.,)

I have the honor to state that I reported settlement
of the case as against Defendants 3 to 7 i.e., Messrs. Mandi
Harianna, B.K. Garudachar and the sons of Mr. Vardhamaniah, and
withdrew the case as against them.

(i.e. 23.5.33)

2. Issues were framed yesterday and the case was posted
to the 27th June 1933 for evidence.

I have the honor to be,

Sir,

Your most obedient servant

A. R. Nageswara Iyer
Government Advocate.

G

for perusal.
As the issues framed may be called for.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

126

No. P 6161

Dated, Bangalore. 27th May 1933.

From

The General Secretary to the Government of His Highness
he Maharaja of Mysore.

To

The Government Advocate,

B a n g a l o r e .

~~Sir~~

O.S. 28/30-31 on the file of the
District Court, Bangalore. (Govt. Vs.
Essenflour Products Co., Ltd.,)

Sir,

With reference to your letter No. 900/32-33 dated
25th May 1933 intimating the withdrawal of the case against
defendants 3 to 7 in the above case, I am directed to --
request that a copy of the issues framed may kindly be sent
for information of Government.

I have the honour to be,

Sir,

Your most obedient servant,

187

General Secretary to Government.

188

SUBJECT

Section

File No.

Serial No.

Diary No. of letter replied to.....

No. *P 6161*

To

The Daily Advocate

General and Revenue Secretariat

5/30/31 on the file

the

193

of the Dist. Ct. B'lore

(Gunt vs. Emerson Products Co Ltd)

Date of issue.....

29/9/33

Sir,

led by

Mr. M. M. Rao

with reference to

*Your letter no 900/3233 dated 25.4.33
May 1933 intimating the withdrawal
of the case against defendants
3 to 7 in the above case I
am directed to request that a
copy of the order framed may
kindly be sent for information
of file*

enclosures.....

Copied by.....

*150
27/5*

*I have enc
150m l See*

Examined by.....

In reply please refer to

No. 940

Enc 029

6469/28
OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 12th June 1933.

FROM

A. R. NAGESVARA IYER, Esq., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

GENERAL SECRETARY
TO
13 JUNE 1933
Law P. 22

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

10/16/33
SIR,

With reference to your letter No. P.6161 dated the 27th/29th May 1933, I have the honor to forward herewith as desired, a copy of the Issues framed in Original Suit No. 28 of 1930-31 on the file of the - District Judge, Bangalore Division. (Government of Mysore VS. The Essenflour Products Co., Ltd.,).

I have the honor to be,
Sir,
Your most obedient servant,

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE.

Original Suit No. 28 of 1930-31.

Plaintiff:- The Government of Mysore.

Defendants:- Essenflour Products Co., Ltd.,
and another.

S S U E S.

- (1) Is the suit claim true ?
- (2) Did the Plaintiff elect to take proceedings against Mr. Mavlankar and is the Plaintiff therefore precluded from claiming the suit amount from the Defendants ?
- (3) Did the Plaintiff take forcible possession of the business and assets of the 1st Defendant and did 1st Defendant suffer any damage thereby ?
- (4) Was there a privity of contract between Plaintiff and Mr. Mavlankar and is not the Plaintiff for that reason competent to make any claim against the Defendants ?
- (5) Is the suit bad for non-joinder of the Share-holders ?
- (6) Is there no cause of action against the 2nd Defendant ?
- (7) Did Mavlankar fraudulently misappropriate the amount and are the Defendants therefore not liable to the Plaintiff ?

(8) Did the 2nd Defendant act fraudulently and is he liable for the suit claim ?

(9) Is the suit not maintainable because of the arbitration clause in the agreement ?

(10) Has this court no jurisdiction to - entertain the suit ?

(11) Was the 2nd Defendant prevented by Plaintiff from taking action against Mavlankar and is he not for that reason liable for the suit claim ?

Sd) A. Sreenivasaragava Chari.

District Judge.

"C O P Y"

M. S. Sreenivasaragava Chari
GOVERNMENT ADVOCATE

In reply please refer to
No. 118

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE, 131

Bangalore.....9th.....September.....1933.

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE

GENERAL SECRETARY
11 SEP. 1933
No. 118

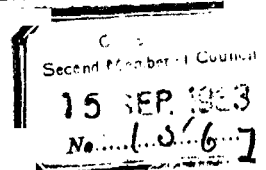
SIR,

Original Suit No. 28 of 1930-31 on the file
of the District Judge, Bangalore Dn.,
(Government of Mysore VS. The
Essenflour Products Co., Ltd.,)

I have the honor to state that the above case came on
for hearing before the District Judge yesterday and Mr. Y. Narasinga
Rao was examined as the 1st witness for the Plaintiff and Mr. K.T.
Sundara Rao the 2nd witness was also examined in part and the case
now stands adjourned to the 11th and 12th proximo for further -
evidence.

I have the honor to be,
Sir,
Your most obedient servant,

M. Nageswara Iyer
Government Advocate.





No. 1976

GEN. & REV. SECRETARY
7 OCT. 1953
DEVELOPMENT BRANCH

SANDALWOOD OIL FACTORY

26th October, 1933.

FROM

A.V. Ramanathan Esq., B.A.,

~~XXXXXXXXXXXXXXXSAHKBXESQXBXXEX~~

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE

BANG.

DEVELOPMENT SECRET
27 OCT. 1933
To *Mr.*

To

The Secretary to the Government of Mysore,
Development Department, Bangalore.

Sir,

I have the honour to state that information is received from the Government Advocate to the effect that Judgment was pronounced on the 24th instant in Original Suit No.28 of 1930-31 (The Government of Mysore VS. The Essenfleur Products Co. Ltd.), awarding a decree against Defendants 1 and 2 for a sum of Rs 7,89,102-3-10 together with costs and current interest.

I have the honour to be,

Sir,

Your most obedient servant,

Director.

133
GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P1992 Dated, Bangalore, 1st November 1933.
2

From

ie General Secretary to the Government of His Highness the Maharaja of Mysore.

To

The Government Advocate,
Bangalore.

Sir,

O.S. 28/30-31 on the file of the
District Court, Bangalore.
(Govt. Vs. Essen-Fleur Products Co.).

With reference to your letter No.248 dated 24th
October 1933 intimating that the above case was decreed
against defendants 1 and 2 for a sum of Rs.7.89.102-3-10
together with costs and current interest, I am directed
to request that a copy of the judgment and decree may
kindly be obtained and sent for information of Govern-
ment early.

I have the honour to be,
Sir,
Your most obedient servant,

me
General Secretary to Government.

G. R. S. App F. G. 3.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

10, P 1992/072/11/32

To,

The Rev. Advocate

S. 28/2021 on the file of

H. B'line

(Gur vs Essel Flour Products)

Sir,

With reference to

Your letter no. 220 dated 24.10.21
intimating that the above case

was decreed against defendants

1 and 2 for a sum of Rs

7,89,102-3-10 together with costs

and current interest & are

directed to

Cop^y of the judgment ~~and~~

and decree may kindly be

obtained and sent for impma

In reply please refer to

No. 444.

Enc. Judgment & Decree.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 17th January 1934.

Law 24-31-12

FROM

A. R. NAGESVARA IYER, Esq., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt
of H. H. The Maharaja of Mysore,
BANGALORE.

GENERAL SECRETARY
17 JAN 1934
No. 100

SIR,

me 18.1.34

In continuation of this office letter No. 390 dated the 15th December 1933, I have the honor to forward herewith, for the information of Government, copies of Judgment and Decree passed in Original Suit No. 28 of 1930-31 (Government of Mysore VS. Essenflour Products Co., Ltd.,) on the file of the District Judge, Bangalore Division.

I have the honor to be,

Sir,

Your most obedient servant,

M. R. Nageswara Iyer
Government Advocate.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 3719

Bangalore, Dated, 2 - 2 - 1934. 193

3

From

H.V. Ramasvami, Esquire, M.A., B.L.,
*General Secretary to the Government of His Highness
the Maharaja of Mysore.*

To

A.R. Nageswara Iyer, Esquire, B.A., B.L.,
Government Advocate, Bangalore

Sir,

With reference to your letter No. 444 dated the 17th January 1934 forwarding copies of judgment and decree in O.S. No. 28 of 1930-31 on the file of the District Judge, Bangalore, (Government of Mysore Vs. Essenflour Products, Limited), I am directed to request you to intimate for information of Govt. whether any action is now necessary to get the book debts due by Asbestos Company, Limited, and the Development Syndicate, vested in Government, so as to prevent other decree-holders to claim rateable distribution out of any money that may be recovered from the said Companies.

I have the honor to be,

S i r ,

Your most obedient servant,



In General Secretary, to Government.

TSO

SUBJECT

Section

File No.

Serial No.

Diary No. of letter replied to

No. *7 3719/*To */The Gov. Ad.*

Sir

General and Revenue Secretariat

(

193

Date of issue *3-2-34*Signed by *M. N. J. Rao*

List of enclosures

Copied by *M.*
2.2.34

Examined by

with reference to your

letter no. *444* dated *17th Jan 1934*forwarding copies of Judgment and
decree in O.S. 28/30-31 on the file of

the Dist. Judge, Bangalore.

(For of Mysore vs. *Asbestos Products Ltd*)I am directed to ^{request} you to intimatefor information of Govt. whether any
action is now necessary to get the
book debts due by *Asbestos Co Ltd*

and the Development Syndicate

vested in Govt. so as to prevent

any decree " " as to cla

suitable distribution out of any

Reply please refer to
No. 634

52/3633
OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 28th March 1934

FROM

A. R. NAGESVARA IYER, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. the Maharaja of Mysore,
Bangalore.

1/3/34
SIR,

With reference to your letter No. P. 3719, dated the 2nd/3rd February 1934, I have the honor to state that the decree obtained by Government against the Essenflour Products Co., Ltd., may be put in Execution by applying for sale of the debts due by the Asbestos Company, Limited., and the Mysore Development Syndicate, which have already been attached in the case.

2. The Certified copy of the decree sent by me may kindly be returned to me as I require it for filing the Execution Application.

I have the honor to be,
Sir,
Your most obedient servant,

A. R. Nageswara Iyer
Government Advocate.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 10th May 1934.

No.

PS179

Em

Law 24-31-12

From

The General Secretary to the Government of His Highness
the Maharaja of Mysore.

To

The Government Advocate,
Bangalore.

Sir,

With reference to your letter No.634 dated 28th March 1934 re- the decree obtained in O.S.28/30-31 on the file of the District Judge, Bangalore (Government Vs. Essenflour Products Co., Ltd., and others), I am directed to return herewith the certified copy of the decree in the above case, sent with your letter dated 17th January 1934 and to request that further execution proceedings may be taken so as to vest in Government full rights to the debts already attached as suggested in your letter under advertisement.

I have the honour to be,

Sir,

Your most obedient servant,

Sd. S. Abdul Wajid

General Secretary to Government.

Memo

--- No.

PS180

Copy of the above is forwarded, with compliments, to the Director of Sandalwood Oil Factory in Mysore for information.

By order,

General Secretary to Government

SUBJECT

Sectic_

File No.

Serial No.

Diary No. of letter replied to

No. P 5179/5, 2000017

To the Gov. of Madras

General and Revenue Secretariat

Date of issue

11/5/34

Signed by

J. M. A. N.

List of enclosures

Copied by

With reference to
Your letter no. 634 d. 28.11.34
re the execution of the decree
obtained in O.S. 20,000 on the part of
the Dist. Judge, Bangalore (for the
Estate of the Products Co. Ltd. & Co.)
I am directed to return herewith
the certified copy of the decree in
the above case, sent with your
letter no. 444 d. 17.1.34 and to
request that further execution proceedings
may be taken to the extent of the debt
port full value of the debt, after
the debt has been ascertained.



the hands of the defendants 5 to 7. The suit was filed on 9-3-1931

the statements of the defendants 1, 3, and 4 was filed ^{on 25-1-1932} and that of the 2nd defendant was filed on 29-1-1932. The reply by the plaintiff was filed on 28-3-33.

The suit came on for settlement of issues on 23-5-1933 and the following issues were framed.

1. Is the suit claim true?
2. Did the plaintiff elect to take ~~to take~~ proceedings against Mr. Mavlianker and is the plaintiff therefore precluded from claiming the suit amount from the defendants?
3. Did the plaintiff take forcible possession of the business and assets of the 1st defendant and did 1st defendant suffer any damages therefrom?
4. Was there a privity of contract between plaintiff ^{and Mr. Mavli} ~~and is not the plaintiff~~ for that reason competent to make any claim against the defendants.
5. Is the suit bad for non-joinder of the share-holders?

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6. Is there no cause of action against the 2nd defendant.

7. Did Mavlankar fraudulently misappropriate the amount and are the defendants therefore not liable to the plaintiff

8. Did the 2nd defendant act fraudulently and is he liable for the suit claim? 9) Is the suit not maintainable

because of the arbitration clause in the agreement? ~~10)~~

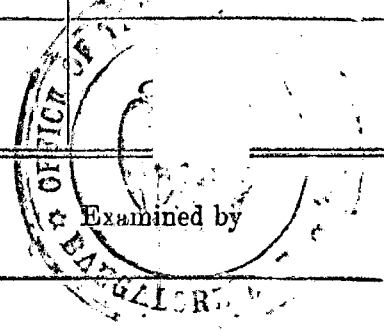
(10) Has this court no jurisdiction to entertain the suit? 11)

(11) Was the 2nd defendant prevented by plaintiff from taking action against Mavlankar and is he not for that, reason liable for the suit claim.

The suit came on for hearing on several dates of he and finally came for arguments on 12-10-1933. The list of documents admitted in evidence and the list of witnesses examined are separately filed.

The court pronounced the following JUDGMENT

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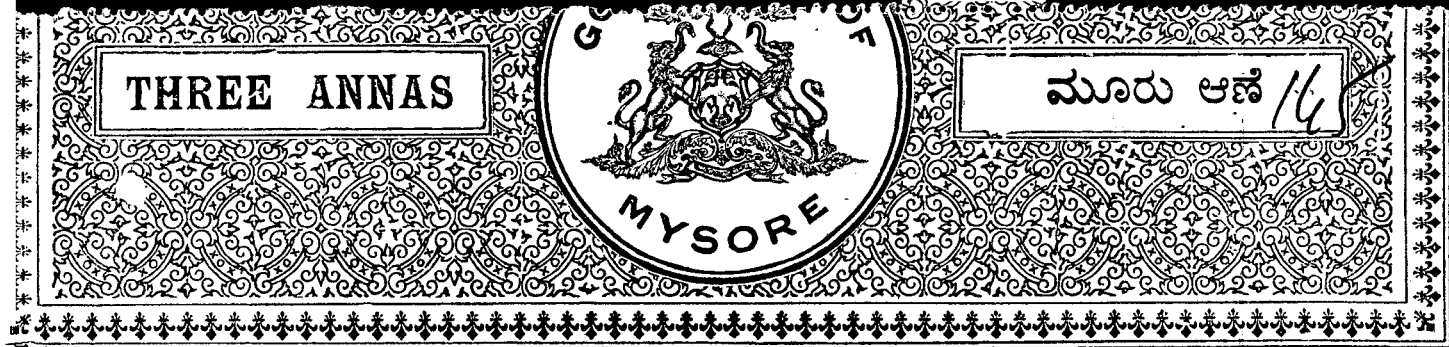




The plaintiff's case is as follows:- The 1st defendant Company which was dealing in the manufacture ~~of~~ and sale of Essential oils in India and foreign countries is a private Limited Company registered under the Mysore Companies Regulation, the 2nd defendant being the Managing Director since its formation, defendants 3 and 4 being the Directors and the deceased father of the defendants 5 to 7 being the Governing Director thereon. The 2nd defendant and the father of defendants 5 to 7 and defendants 3 and 4 were also the Managing Director, the Governing Director and the Directors respectively of another allied private Limited Company, viz. , Mysore Asbestos Company Limited. There was another partnership called the M.D.S. Company of which the 2nd defendant was the Manager the other persons above named being the important partners. All these three Companies were practically worked

~~as one concern.~~

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1st began

In May 1923 the 1st defendant Company ~~began~~ negotiations with the plaintiff for taking up the agency for the sale of Sandalwood Oil manufactured by the Government and eventually became the Agents of the plaintiff for the sale of their Sandalwood Oil in Europe and America from 1-9-1923 and took up the business from the previous Agents Messrs Whiffin & Sons. Though the 1st defendant Company took up the agency from 1-9-1923 on terms and conditions agreed, its officers put off executing the required agreements and after repeated pressure was put upon them, the 1st defendant Company executed an agreement on 10-6-1925 for a period of three years which was renewed for a further period of 3 years and 4 months on practically the same terms and conditions and an agreement was executed on 9-12-1926. A similar agreement was executed on the same day for the distillation of Sandalwood Oil in America.

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Under the terms of the agency the 1st defendant Company were bound to send proper accounts of sales etc., to the Director of the Sandalwood Oil Factory ~~as~~ regularly and to credit to Government the proceeds from the sale of Sandalwood Oil realised on behalf of Government without delay and not later than once a week. They were also responsible to make good the loss resulting from bad debts and to credit such ~~sum~~ amounts to Government not later than six months from the date of such sale. The defendants 1 to 4 and the father of defendants 5 to 7 were thus Trustees as well for the plaintiff in regard to these collections. The 1st defendant company were doing their business in Europe through their ~~representative~~ representative Mr. K.B. Mavlankar, since deceased and in America through their representatives Messrs. Cox, Aspden and Fletcher

After ~~a~~ sometime the arrears of sale amounts began to

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amounts having utilised and misapplied by the Directors of the 1st Defendant Company for purposes of the Companies and for meeting other liabilities. The Directors have acted in violation of the terms of the agreement to the detriment of the plaintiff and have also been benefited thereby to a considerable extent. It was also found that correct accounts were not being sent by the 1st defendant Company, to the Director of Sandalwood Oil Factory and only a small portion of the amount actually received from the customers were credited to Government. Accordingly the plaintiff took over from the 1st Defendant the control of the European business on 1-12-1928 and the American business on 1-1-1929.

Though the financial position of the 1st Defendant Company and its sister Companies was not sound when the agency was

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THREE ANNAS



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was applied for and they were working at a heavy loss which the Directors were fully aware of, they deliberately misrepresented to Government that the 1st Defendant Company was in a flourishing condition with a view to secure the agency. The 2nd defendant and the deceased father of defendants 5 to 7 made use of the moneys for their own purposes and defendants Nos. 3 and 4 by their gross and wilful neglect and dishonest and fraudulent conduct caused these moneys to be so utilised though they were trust moneys belonging to plaintiff. The Directors including defendants 3 and 4 facilitated the misappropriation of the moneys belonging to Government by authorising the 2nd defendant and the father of defendants 5 to 7 and the London Representative Mr. Mavliankar to operate on the Sandal Oil Accounts with Messrs. Coutts & Co. of London which had been opened solely for the deposit of Sandal Oil realisa-

2807

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realisations being credited to plaintiff. The Directors not only actively encouraged the misapplication of Sandalwood Oil realisations, they held no meetings regularly and knowing that the 1st Defendant Company and the Sister Companies were working at a loss put pressure on the Managing and Governing Directors to pay off their liabilities knowing that such liabilities could only be paid by utilising the Sandal Oil realisations. The Directors are therefore personally liable to make good the loss. The father of defendants 5 to 7 is liable to make good the suit claim particularly as the Sandal Oil realisations had been utilised for the benefit of himself and his estate to discharge his personal debts and his estate was therefore liable for the suit claim. The plaintiff claims from the 1st Defendant Company, defendants 2 to 4 individually and the estate of the father of the defendants 5 to 7 in the

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Jm

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the hands of defendants 5 to 7.

245,684-2-11 or its equivalent Rs. 6,09,122-15-1

83,880-17 --do-- " 2,30,670- 7-0

Total. Rs. 8,39,793- 6-1

During the pendency of the suit defendants 3 to 7 effected a compromise with the plaintiff of the plaint claim by payment of Rs. 45,000/- and the plaintiff's Pleader was permitted to withdraw the suit as against defendants 3 to 7 and to continue the suit only as against defendants 1 and 2. No order was passed as regards costs with respect to defendants 3 to 7. This sum of Rs. 45,000/- has been set off against the plaint claim reducing the plaint amount to Rs. 7,94,793-6-1. Subsequent to the case being closed for judgment the plaintiff's Pleader has filed a memo reporting the receipt of a further sum of Rs. 5,691-2-3 which has also to be deducted from the

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the suit amount. The plaint claim therefore becomes now

reduced to a sum of Rs. 7,00,000-0-10.

In view of the fact that the suit has been permitted to be withdrawn upon compromise as against defendants 3 to it becomes unnecessary to consider the written statement filed on behalf of the said defendants and I confine myself to the written statements filed by 1st and 2nd defendants. The main contention of the 1st defendant may be summarized as follows:- The 1st defendant admits obtaining from the plaintiff the agency for the sale of the plaintiff's Sanda wood Oil in Europe and America as from 1-9-23 as well as the agreements dated 10-6-25 and 9-12-26 relied upon by the plaintiff. He however contends that he is not liable to pay the plaintiff any amount and also denies the correctness of the statements of accounts filed with the plaint. This

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This defendant was obliged to employ a Representative in London and accordingly appointed Mr. K.B.Mavlankar who h considerable experience in the business when appointment was made, it is alleged, with the knowledge of the plaintiff, and the approval of its Officers. Mr. Mavlankar's employ- ment was solely confined to find purchasers for sandalwood Oil and he was not authorised to receive moneys from them, the purchasers being required to pay to the price of the Oil directly to Messrs. Coutts & Co., London, with whom an account was opened, the amounts after deducting commission etc.. payable by plaintiff to the 1st defendant transferred every week to plaintiff's account with the said Bankers. Mr. Mavlankar was given permission to operate upon plaintiff's account with Messrs.Coutts and Co, with the knowledge of the plaintiff. The 1st defendant under the terms of

[Signature]

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agreement could sell Sandal Oil on credit but upon his own responsibility. The 1st defendant was conducting business in accordance with the agreement until February 1929 when plaintiff took possession without previous notice of all the assets and business of this defendant in Europe and America. This defendant was never a Trustee for the plaintiff and did not apply any moneys of the plaintiff for his own use. This defendant believes that the whole of the amount ~~damaged~~ due to the plaintiff has been misappropriated by the deceased Mavlankar without the knowledge or privity of this defendant or its Directors.

Mr. Mavlankar was in possession of assets and moneys of this defendant other than those realised from the sale of the plaintiff's oils and used to occasionally accommodate the defendant. In the course of the business this defendant

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drew drafts on Mr. Mavlankar some of which appear to have been met contrary to instructions from the sale proceeds of plaintiff's oil with Messrs. Coutts & Co. In para 8 of the written statement it is admitted that the Managing Director and the Governing Director in order to cover various drawings, made various transfers in the accounts of this defendant and the other Sister Companies. The plaintiff having elected to take proceedings against Mr. Mavlankar and recovered from him other customers moneys payable to this defendant he was precluded from instituting this suit or claiming any sum from this defendant. It is also contended that owing to plaintiff taking forcible possession of the business and assets of the defendant including outstandings which are more than ~~250,000/-~~ ^{£ 60,000/-} this defendant has been put to loss and damage and the plaintiff's claim must

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THREE ANNAS



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must be reduced by a sum of £60,000/-. The next contention is that privity of contract has been established between the plaintiff and Mavlankar and therefore the plaintiff has no claim against the defendant.

The 2nd defendant's defence to the suit may be summarised as hereunder. He was not the Managing Director of the 1st defendant Company from its inception but only from 1921. As a Managing Director this defendant could not engage himself in details ~~XXXX~~ pertaining to the accounts or the office. The agreement of Agency was only between the plaintiff and the 1st defendant and not between the plaintiff and defendants 2 to 4 and this defendant could not individually be a party to the said agreement and hence there was no cause of action against this and other defendants.

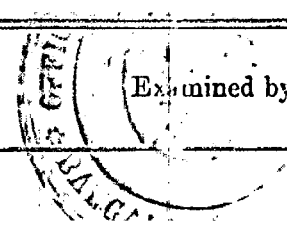
This defendant along with others were not trustees of the

JSM

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plaintiff. It is true that Mr. Mavlankar was doing business in Europe on behalf of the 1st defendant. Mysore ~~Asbestos~~ Limited, and M.B.S. long prior to the contract between the plaintiff and the 1st defendant. In relation to the Sandal Oil sales the position of Mr. Mavlankar was different. He was an agent employed in the natural course of business to carry on the sales of Sandalwood oil in Europe and as he was employed with the knowledge and consent of the plaintiff he became plaintiff's Agent, consequently for frauds and misappropriations committed by Mr. Mavlankar neither the 1st defendant nor the 2nd defendant were responsible. The plaintiff took up the business in a high handed manner and was bound to render full and ^{accurate} accurate of his management. This defendant did not make use of any of the moneys for his own purposes which was admitted by the Government Advocate on behalf of the *JAN*

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the plaintiff in the course of the Criminal trial of this defendant. Through out this defendant acted in good faith and with the best of motives.

The 2nd defendant also urges that the sum ~~paid~~ sued for is not correct, that this Court has no jurisdiction as the cause of action arose either in Mysore or in London, that the arbitration clause in the agreement covers the present dispute, that no relief can be granted ^{now} against this defendant personally, and that it is necessary to implead the legal representatives of Mr. Mavlankar as defendants in this suit. He also contends that the plaintiff knew from 1928 that Mr. Mavlankar had misappropriated a large amount yet the plaintiff instead of proceeding against him indulged in an unfair and iniquitous prosecution against this defendant and failed to recover the amounts by proper steps against Mr. Mavlankar.

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Further by the arrest and detention in jail of this defendant the plaintiff prevented him from taking any action against the said Mr. Mavlankar or his estate. Mr. Mavlankar even undertook to make good to the Government all the money which he misappropriated and therefore the plaintiff was estopped from making any claim against this defendant in the suit. For these reasons the 2nd defendant contends that the suit against him may be dismissed with costs.

The plaintiff has filed replied to the written statements of the 1st and 2nd defendants respectively. the material portions of which are as follow:- It is not true that Mr. Mavlankar was appointed Agent of the 1st defendant with the knowledge of the plaintiff or his officers. The 1st defendant is liable to Government for the moneys and the plaintiff had nothing to do with their Agent. Mr. Mavlankar voluntarily

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paid some amounts to the plaintiff and the plaintiff put an end to the contract on account of the fraud of the defendant.

All sums recovered by the plaintiff towards the oil sold by the 1st defendant have been taken credit. Mr. Mavlankar was neither in law nor in fact the plaintiff's Agent and the 2nd defendant in collusion with Mr. Mavlankar misappropriated large amounts. Lastly Mr. Mavlankar's legal representatives were not necessary parties to the suit.

During the trial of the case the Pleader for the 1st defendant intimated that he was not cross-examining the plaintiff's witnesses on behalf of his client. On 8-9-1933 the plaintiff partly examined in chief two witnesses and the case was adjourned to 11-10-1933. On 11-10-1933 just before the case was taken up, the 2nd defendant sent a letter to the Court which is filed with the records, dated at Bangalore 10 A.

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11th October 1933 stating that his pleader Mr. D.M. Ramachandra Rao had been ill for over a fortnight and could not attend to the case that day, that knowing this the 2nd defendant had engaged Mr. D.Shama Rao a week back to conduct the case on his behalf and that he also suddenly fell ill just a day before the date of hearing. He prayed for a short adjournment and if it was not possible the plaintiff's witnesses could be examined in Chief and another opportunity given to the said defendant to cross-examine them on the next date of hearing. The plaintiff was ready with his witnesses and I was not prepared to adjourn the case. However with a view to accommodate the 2nd defendant the plaintiff's witnesses were examined in chief that day and the case was adjourned to the next day for their cross-examination. On the next day i.e., 12-10-1933 Mr. M. V.Venkatesa Rao who

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who had appeared for Mr. D.M. Ramachandra Rao on the 11th
itself stated that Mr. D.M. Ramachandra Rao had come to
Court but that he was not well and wanted an adjournment.

The Court declined to grant a further adjournment and kept
by the case for the information being conveyed to Mr. D.M.

Ramachandra Rao; After the lapse of an hour another Pleader

Mr. P. Bheema Rao appeared for the 2nd defendant and stated

that he was not in a position to conduct the case as instruction

had been given to Mr. D. M. Ramachandra Rao. He added

that on behalf of Mr. D. M. Ramachandra Rao he submits that

he is not able to get up the stairs owing to illness and

wanted a fortnight's adjournment coupling it with a condition

that if an adjournment was refused he would retire from the

case. The Court refused an adjournment and proceeded

with the case.

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The 2nd defendant had ample opportunities for making arrangements for the conduct of his case and it is somewhat significant that though he was himself present in Bangalore and wrote the letter asking for adjournment he did not appear before the Court on either of the dates though in order to accommodate him the Court deferred cross-examination of the plaintiff's witnesses to the next day.

The 1st issue is whether the suit claim is true. As ^{argued} ~~argued~~ by the plaintiff's Pleader the 1st and 2nd defendants have merely contented themselves by making a vague allegation that the statement of accounts on which the plaintiff's suit is based is incorrect but have not stated any of the particulars in which they are incorrect, nor have they themselves filed any accounts or statements of accounts to rebut the plaintiff's case. The plaintiff has based his suit claim entirely on the *g.m.*

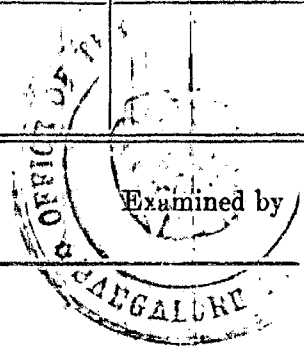
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the statements of accounts submitted by the 1st defendant, and 2nd defendant as the Managing Directors. These accounts have been marked as Exhibits J, K, and L series. Every one of these sales reports, account sales and summaries bear the 1st defendant's seal and were submitted to the plaintiff by the 1st defendant in his capacity as Agent. Neither the 1st defendant nor the 2nd defendant is entitled to repudiate these statements. The 2nd defendant in his written statement stated that these accounts were furnished by Mr. Mavlankar and that he believed them to be correct. None of these statements Exhibits J, K, and L series so far as I can see mention Mr. Mavlankar at all. They are all statements furnished by the 1st defendant Company, and signed by either the Managing Director or the Governing Director. There is no substance in the contention of the 2nd defendant that the

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the 1st defendant Company is not responsible for the correctness of these statements. Exhibit E is an agreement dated 9-12-1926 between the plaintiff and the 1st defendant. Clause 7 of Exhibit E requires that the Agents viz., the 1st defendant "shall maintain true and correct accounts and particulars of all Oil with the Director from time to time sent to them and of all sales, receipts, payments and other transactions concerning the same.... The Agents should submit a true and complete account regularly at the end of each month or all transactions effected during the month in such manner as may be prescribed by the Director. Such accounts shall among other particulars show the details respecting sales, the stock of oil received, disposed of and remaining at hand, payments received with dates of receipts, remittances to Messrs. Coutts & Company, the Government bankers with dates and amounts

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outstanding." The statements viz., Exhibits J, K and L series were apparently submitted in pursuance of this clause and every one of them have been sent from the office of the 1st defendant viz., Essenflour Products, Limited at Mysore. It is futile to argue that these defendants are not bound by these statements and returns.

The evidence of Plaintiff Witness 1 the former Director of the Sandal Oil Factory and Exhibit H1 which is account sales No. 63 for November 1928 show the outstandings due by the 1st defendant to the plaintiff was £54,551-16-6. This statement bears the signatures of the 2nd defendant as the managing Director of the 1st defendant company, and both these defendants are bound by it. This amount of outstandings is item No. in Schedule A of the plaint. Exhibit AA is the corresponding statement signed by Mr. Mavlankar and according to it a sum

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of £52,564-11-6 was shown as due to Government. There is a difference between the figures in Exhibit AA and Exhibit H which leads to an inference that the figures furnished by Mr. Mavlankar were scrutinised and corrected by the 1st defendant's Office at Mysore.

The 2nd item in Schedule A is a sum of £1909-6-3 which is commission at $3\frac{1}{2}\%$ on item No. 1 which the 1st defendant had ~~had~~ deducted and appropriated. According to Clause 12 of Exhibit E the 1st defendant was entitled to a commission of $3\frac{1}{2}\%$ only "on the sale proceeds realised by them". The 1st defendant was not entitled to deduct any commission in respect of item No.1 of A Schedule which represents only outstandings and not amounts realised. Till these amounts of outstandings were actually realised no commission was payable to the 1st defendant in anticipation of their realisation.

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The plaintiff is therefore entitled to add this item No. 2 to the amount of his claim. Item No. 3 represents amounts collected by the first defendant from customers which have not been credited to Government. A sum of £ 15, 856-9-1 has been deducted representing sums subsequently adjusted or received and the net claim in respect of Schedule A is £ 45, 684-2-11 the equivalent Indian money at £ 0-1-6 per rupee being Rs. 6,09,122-15-11.

Schedule B represents sums due on account of the American Business. Exhibits M and M appertain to these sales. According to Exhibit M the sum due to the plaintiff by the 1st defendant on account of American sales at the end of December 1928 amounts to £ 1,50,391-10. This sum represents item No. 1 of Schedule B. Item No. 2 of Schedule B represents a sum similar to Item No. 2 of Schedule A and the same

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remarks apply to it also. The 1st defendant is not entitled to deduct commission in advance in respect of item No. of schedule B which are outstandings not realised. Under Clause 19 of Exhibit F the terms in Exhibit D govern matters not specifically provided for in Exhibit F. The plaintiff is entitled to add to his claim the sum of Rs. 2,20,200-00 being the amount of commission unauthorisedly drawn by the 1st defendant. Item No. 33 of schedule B represents the amount of compensation recovered from the Ship Agents for the loss of Sandal Oil in transit to which the plaintiff and not the 1st defendant who is merely an agent is entitled to. The plaintiff has given deductions to the amounts recovered since 1-1-1929 from customers through Mr. Cox and the net claim is Rs. 83,880-17 which is equivalent in Indian Currency at Rs. 2-75 ie Rs. 2,30,670-7-0. As already observed the

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the defendants have not stated or shown how the plaintiff's claim is incorrect based as it is upon the very statements furnished by them. My finding on the first issue is that the plaintiff's claim is true.

The first and the second defendants have conveniently sought to shift the responsibility for the misappropriation of the amounts to Mr. Mavlankar. Mr. Mavlankar is dead and is not apparently in a position to defend himself. As will be observed presently the second defendant appears to have been the prime mover in these misappropriations.

Issues Nos. 6,7 and 8 form a group and relate to the liability or otherwise of the second defendant. The second defendant contended that Mr. Mavlankar fraudulently misappropriated the amounts, neither he nor the 1st defendant is liable.

Mr. Mavlankar was at best only a representative or Sub-agent. *9/10*

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of the first defendant co., Under the terms of Exhibits

D and E the 1st defendant Co., was responsible for all the moneys realised by the sale of Sandalwood oil including misappropriations if any by their representatives or Agents.

The 1st defendant Co., is liable to make good to the Government sums of money misappropriated by their agents or employee

Consequently even assuming that Mr. Movlankar fraudulently misappropriated the amounts the 1st defendant Co., would be primarily liable to make good such amounts to the Plaintiff.

The circumstances, however, warrant an inference that if Mr. Movlankar had been left alone he would not have misappropriated any amounts realised by the sale of Sandal wood Oil and it was the constant pressure and demanding put upon him by the second defendant that drove Mr. Movlankar to draw upon the realisations of Sandalwood Oil which had to be paid -- 94/71

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to Government. The evidence and probabilities point to the fact that the second defendant was constantly in need of large sums for financing the ^{the} ~~Esse~~ⁿ flour or other companies. He had recourse to Mr. Movlankar and drew heavily upon him knowing full well that Mr. Movlankar would necessarily have to send these amounts from the Sandalwood Oil realisations. It is idle for the 2nd defendant to pretend ignorance of Mr. Movlankar's drawing upon Sandalwood Oil realisations.

Several personal and confidential letters written by the second defendant ~~to~~ in his own hand to Mr. Movlankar (vide Exhibits V and BB series) show that the second defendant was sending S.O.Ss. to Mr. Movlankar for money and that he was an active participant in the misappropriation of Sandalwood Oil moneys by Mr. Movlankar. Here is an extract from a letter dated 27-5-26 from the second defendant to Mr. Movlanker. JH

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Movlankar (Vide Exhibit V₂ marked personal and confidential)

" In regard to our financial situation I have to state that

our resources are mostly locked up in this mill. In connection

with our ^{ಫ್ಲೂರ್}Esseⁿflour and other activities we have to pay rs.

2,75,000/- before the end of June and it is in regard to this

I have to approach you. Had Mr. Vardhamaniah been alright

there was no need to trouble you and I trust you will manage

to give us relief for about three months. I want you to remit

as soon as you receive this letter a sum of ₹10,000/- to

Mr. Vardhamaniah's account in the Central Bank of India, Madras

or the Imperial Bank. This sum will be remitted back in

September ie about three months time. How you do it I do

not know But you must conserve your ^{ಫುಲ್}full resources and remit

the amount ". An earliar letter Exhibit V₃ which is dated

15-7-1925 contains the following remarks:-

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" You are no doubt aware of the very difficult times through which the Indian Cotton Mill Industry is passing. We along with others lost heavily during the year 1924. Some of our enemies took advantage of this and created alarming rumours of our financial position..... in brief they went so far as to hint that we had utilised the sandalwood Oil revenues. The Government grew panicky..... The only party that knew that you had utilised such a large sum was Mr. M.L. Vardhamanian, nobody else knew it, not even our clerks. The Director is not aware of our remittance to you. This had to be sent from Madras, for had we sent it from Bangalore through our Bank everybody would have known it..... I was telling to the Director that you were keen on securing larger business before the Official year and as such had neglected collections..... Poor man he was being pestered by Government and in turn he *AM*

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he was constantly pressing me for explanation." This single letter is sufficient to show that the second defendant was not only aware of Sandalwood Oil realisations being utilised by Mr. Movlankar for remittances to him but that he was actively concealing the fraud from the Director as well as the Government. If every deal was a straight deal why should the 2nd defendant be afraid of the Director(of Sandal Oil Factories). knowing the remittances sent by him to Mavlankar and why should the remittances have been sent surreptitiously through the Madras Bank?. Exhibit V₃ shows that even so early as July 1925 the second defendant had started misapplying the Sandalwood Oil proceeds. ^{JM} Exhibit BB. dated 10-6-1926 which is marked urgent and important is a reminder to Exhibit V₂. The 2nd defendant in Exhibit BB reminds Mr. Mavlankar to remit

₹ 10,000/- to the account of Mr. Varahamaniah and adds " ^{JM}

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" the matter is really urgent and improtant and I leave it to you to mamage it." An extract from another letter Exhibit BB₁ is also instructive. " If large remittances are ~~not~~ sent over next week, I dread to imagine the consequences. With the greatest possible difficulty and tactics I am putting off the evil day. You will be ruined and we too."

" The Ex-Dewan is come and take good ^{care} ~~care~~ that he does not find out that you are utilising Sandal Oil Funds." Exhibits BB (1) clearly shows that in November 1926 the 2nd defendant was not only fully aware that Sandal Oil funds were being utilised mostly to supply him with the heavy sums demanded but he was ~~xxxx~~ also issuing instructions to Mr. Movlankar to hood-wink the Government and its Officers.

Exhibit BB (3) is another letter from the second defendant to Mr. Movlankar dated 27-12-1926. In that letter the 2nd

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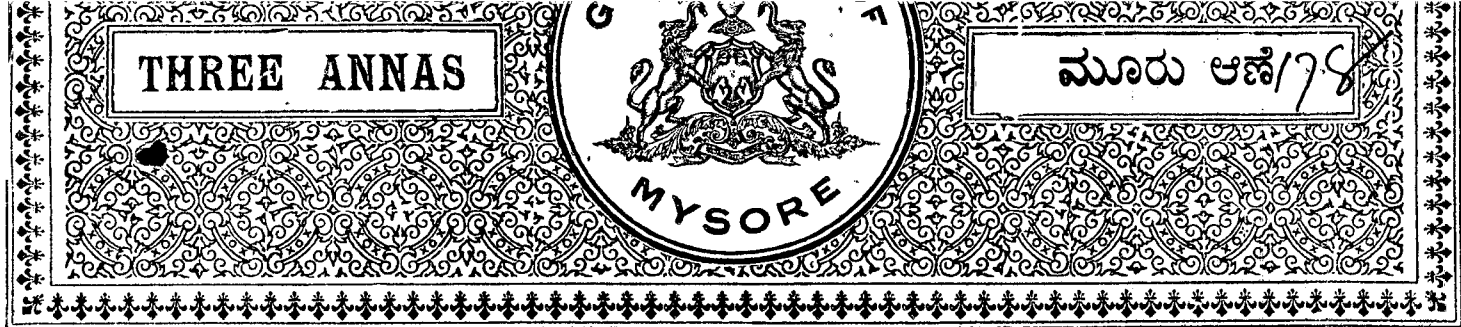
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2nd defendant cautions Mr. Movlankar to be very careful, with the Ex-Dewan Sir A.B. as he calls him and that in no case should Mr. Mavlankar take him into confidence. He adds "please take care that things do not leak out of your office particularly confidential letters and remittances.

Exhibit BB (6) is another letter which bears no date but probably relates to the same period. In Exhibit BB (6) the 2nd defendant says that the previous week he had drawn on him for a sum of £ 3000/- which was required at Mysore urgently. The 2nd defendant adds " Sir A. I did not expect would turn out such a bad card. Do not in any case be aggressive, unless you are driven to take that attitude. Also take care that your confidential letters to me are not broadcasted."

In 1927 the position had become much worse. In Exhibit

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Exhibit BB (5) the second defendant says that Mr. N.Rao,
 (Director of Sandalwood Oil Factories) was getting nervous
 and that the Government were going to insist on getting full
 particulars of sales, dates of payments and remittances and that
 " extreme caution is required at your end. You must be on
 a bold front but should not create ~~xx~~ ill-feeling among
 your competitors." In any case you must so manage that
 Essent flour accounts with Coutts are clean". In Exhibit (2)
 which is a letter dated 16-5-1928 the second defendant advises
 Mr. Movlankar to take care that confidential letters are
 written by Mr. Movlankar himself or typed by one who was in
 his strict confidence and adds " I need hardly point out to
 you that we have drifted all along, but the position today
 is such we must be extremely careful "

There can be no doubt that the second defendant was all

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all along acting fraudulently and that he must have used up a large portion of the sandalwood Oil realisations through Mr. Movlankar for other purposes for example financing Essent flour Co., It is possible that Mr. Movlankar also taking *the cue* the ~~cue~~ from the second defendant was himself utilising Sandalwood oil realisations. May be neither he nor the second defendant expected a crash but went on in the hope that somehow or other they would be able to find money to reimburse and make good the shortage in the sandalwood oil realisations. Whatever may have been their motives they are none the less liable for the amounts utilised. My findings on the 6th 7th and 8th Issues are that there is a cause of action against the second defendant, that even though Mr. Mavlankar fraudulently misappropriated the amounts, the defendants are nevertheless liable and lastly that the second defendant acted

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acted fraudulently and is liable for the suit claim.

The remaining issues may be next considered. The 2nd ~~xxx~~ issue is whether because the plaintiff elected to commence proceedings against Mr. Movlankar he was procluded from claiming the suit amount from the defendants. In my opinion there is *no* substance in this ~~connection~~ *connection*. In the first place whatever amounts had been realised from Mr. Movlankar have been given *to* the plaintiff and in the next ~~place~~ *place* what the plaintiff did merely was to take over the stock, outstandings and the business from Mr. Movlankar when these frauds were detected. The plaintiff at no time released the defendants from their obligations under the contract or Agency. My finding on this issue is that plaintiff is not procluded from claiming the suit amount from the defendants.

As regards the 3rd issue whether the plaintiff took

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took forcible possession of the business and assets of the 1st defendant and did 1st defendant suffer any damages thereby the question of whether the 1st defendant did or did not suffer any damages on account of the plaintiff's act is foreign to the present suit. The 1st defendant has not claimed any set off nor can he in the nature of things claim set off, in respect of an unascertained sum by way of damages. The question of damages does not arise in the present suit and this will be my finding on the 3rd issue.

The 4th issue runs as follows:- Was there a privity of contract between plaintiff and Mr. Movlankar and is not the plaintiff for the reason competent to make any claim against the defendants?. Exhibits D and E clearly show that the agency was between plaintiff and the 1st defendant. So, Mr. Movlankar's name does not figure in it at all. Under Clause

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clause 10 of Exhibit D, the agents, Viz., the 1st defendant Co.

Co., were liable for all moneys recoverable on the sales

effected by them, any credit given by them shall be at their

own risk and they were not entitled ~~to~~ to raise any question

of bad debts. It was the Agents that were entitled to a

commission of 3½% on the sale proceeds realised by them.

It may be observed that the account sales sales reports and

owner returns were being sent by the 1st defendant Co., through

their Managing Director to the Plaintiff. The 1st defendant,

no doubt appointed Mr. Movlankar who was his Agent even prior

to the taking up of the Sandalwood Oil Agency as his repre-

sentative in Europe for the sale of Sandalwood Oil also.

But that does not make Mr. Movlankar as an Agent of the Plain-

tiff. At best Mr. Movlankar would only be a sub-agent so

far as the plaintiff is ~~concerned~~. Under Section 192 of the

concerned

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the Contract Act, the agent is responsible to the principal for the acts of the Sub-agent. The Sub-agent is responsible for his Acts to the Agent but not to the principal except in cases of fraud or willful ^{that wrong} wrong. I am unable to uphold the contention of the defendant that there was privity of contract between plaintiff and Mr. Movlankar --- in fact the available evidence is all to the contrary --- and my finding on the 4th ~~xxx~~ issue is that there was no privity of contract between the plaintiff and Mr. Movlankar and that the plaintiff is competent to bring forward the present claim against the defendants.

As regards the 5th issue my finding is in the negative.

Under Order 1 rule 9 Civil Procedure Code, no suit shall be defeated by reasons/ of non-joinder of parties and the Court has power in every suit to deal with the matter in controversy.

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contraversy so far as regards the rights and interests of the parties actually before it.

The 9th issue:- One of the contentions raised by the defendants is that the present suit is not maintainable because of the arbitration clause in the agreement of Agency. No doubt in Exhibits D and E there is a provision that all questions or differences arising between the parties touching the subject matter is to be referred to a committee of two persons one nominated by each party. If the decision of the committee was unanimous it would be final and binding on both the parties; if otherwise the matter had to be referred to the Chief Judge of Mysore for the time being whose decision was to be final and conclusive. But this clause clearly has no application to cases of fraud or misappropriation of moneys. It may be observed that there is no dispute as

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as regards the terms of the agency or the construction of the agreement. The only question to be considered is whether there has been misappropriation of the money due to the Government and to such a matter the arbitration clause in my opinion has no application. It is clearly provided both in Exhibits D and E that the agency shall ipso-facto determine save in so far as concerns the rights and remedies of the Government against the Agents, upon the commission by the Agents of any grave irregularity or fraud on the Government in connection with the business. The agreement must be deemed to have been determined since the agents (which includes its Sub-agents) and their employees committed fraud by mis-appropriating the amounts realised by the sale of Sandalwood Oil instead of paying it to the plaintiff's Bankers. My finding on the 9th issue is in the negative.

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The 10th issue is as regards the question of jurisdiction of this Court to entertain the suit. It ~~was~~ not clear how this Court has no jurisdiction to entertain the suit. The 1st defendant Co., at present has its registered office in Bangalore City though on the date of Exhibit D had its Head Office in Mysore. As regards the 2nd defendant and defendants 5 to the plaintiff in para 22 of the plaint has prayed for leave to sue them in this Court and I grant this prayer. My finding on this issue is that this Court has jurisdiction to entertain the suit.

The last issue relates to the contention of the 2nd defendant that as he was prevented by plaintiff from taking action against Mr. Mavlankar he is not liable for the suit.

im. In para 36 of the written statement the 2nd defendant says that by his arrest and detention in jail for a long time

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time the plaintiff prevented the 2nd defendant from taking any action against Movlankar or his estate and hence the defendant is not liable. This appears to me to be very curious argument. Merely because the 2nd defendant's act amounted to an offence under the Criminal Law and he was convicted and sentenced to imprisonment by a Criminal Court, he cannot get exonerated from his liability under the Civil Law. It does not transpire in what other manner the plaintiff prevented the 2nd defendant from resorting to remedies if any against Mr. Movlankar. My finding on this issue is that the 2nd defendant was not prevented by plaintiff from taking action against Mr. Movlankar or his estate and that he cannot put forward this ground as a valid plea against the plaintiff's claim.

In the result there will be a decree against defendants

1 and 2 for Rs. 7,89,102-3-10 together with costs on Rupees

44

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Rs. 839,793-6-1 and further interest at 6% per annum from the date of decree till date of realisation.

Signed/- A.S.R. Chari,
District Judge.

Pronounced in open Court.

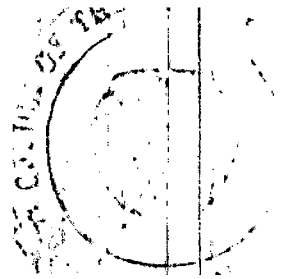
Signed/- A.S.R. Chari,
District Judge.

24-10-33

True copy

D. Kesavada

Head Record Keeper.



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9.1.34 com	9/1/34 com	<i>D. Kesavada</i>	<i>J. Annaiappan</i>	



IN THE COURT OF THE DISTRICT JUDGE, BANGALORE.

ORIGINAL SUIT NUMBER 28. of 1930 - 1931.

P l a i n t i f f :- Government of Mysore.

- Vs -

Defendant:- Sitaramachar and others.

The following witnesses were examined for the plaintiff:-

1. Mr. T. Narasinga Rao.
2. K.T. Sundara Rao.
3. K. Parthasarathi.

No witnesses were examined for the defendant.

Signed/- A.S.R. Chari,

District Judge.

True copy

A. Kesava Rao

Head Record Keeper. 9.1.34



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31-10-33	9-1-34	9 1 34	Addl Sheets 22-12-33 by 3-1-34	23-12-33
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9.1.34 com	9/1/34 com	<i>M. S. S. S. S.</i>	<i>J. S. S. S. S.</i>	



IN THE COURT OF THE DISTRICT JUDGE, BANGALORE DIVISION

ORIGINAL SUIT NUMBER 28 of 1930 - 1931.

P l a i n t i f f :- Government of Mysore.

= Vs =

D e f e n d a n t s :- Seetharamachar and others.

LIST OF DOCUMENTS ADMITTED IN EVIDENCE FOR THE PLAINTIFF

Distinguishing letter or number.	Description of documents.	Remarks and date of admission.
-----	-----	-----
Exhibit A.	Original letter of Government dated 7-7-1923 addressed to the Director. 	8-9-33.
Exhibit B.	Letter dated 29-5-1923 from Mr. Vardhamaniah, Governing Director to the Chief Secretary to Government.	
Exhibit C.	Letter dated 6-9-1923 of the 2nd defendant on behalf of the First defendant company. ...	
Exhibit D.	The agreement dated 10-6-1925 executed by the 1st defendant.	

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- Exhibit E. Another agreement dated 9-12-26 renewing
the lease for a further period of three
years and 4 months. ... 8-9-33
Torn at the bottom
- Exhibit F. Another agreement dated 26-10-1925 for
the distillation of Sandal wood in
America. ... do
- Exhibit G. Do - dated 19-12-1926 renewing the lease
for a further period of two years. do
This is torn and incomplete.
- Exhibit H & H Accounts relating to the London rates for
1 December and November 1928. ... do
- Exhibit I & I Sale reports for December and November 1928. do
- Exhibit J series
from J to J . are the sales reports and accounts.
53 Sales for the months commencing with
July 1926 ending with October 1928 in
respect of the European rates. ... do
- Exhibit K series
From K to K 53. Do - commencing from September 1923
upto June 1926. ... do
- Exhibit L series
from L to L 67. Do - from September 1923 upto
June 1926. do

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Exhibit M & M 1. Sales report and account sales relating to American Business for the month of December 1928. ... 9-33

Exhibit N. One of the weekly cables sent by the 1st defendant do

Exhibit O One of the reminders addressed to the 1st defendant pointing attention to the accumulation of out standings. do

Exhibits P, P1 and P 2. Letters received from 1st defendant signed by second defendant re- reasons for the delay in adjusting the accounts. do

Exhibit Q. Letter dated 20-10-1926 from the 2nd defendant to Plaintiff witness 1 saying not to refer to Mr. Moulanker about the remittances. do

Exhibit R. Letter dated 21-7-1928 written to 1st defendant reminding him to send a certified list of arrears due from customers. do

Exhibit S(series) Not marked.

[Handwritten signature]

Copy applied for on the	Applicant told to appear on the	Applicant appeared on the	Copying stopped for want of copying sheets on the	Additional copying sheets supplied on the
Copy ready on the	Copy delivered on the	Copied by	Examined by	



Exhibit T to T 10. Office copies of letters written by Plaintiff witness 1 to the second defendant demanding the collection of outstandings.

Exhibit U and U 1. Letters written by the second defendant in reply to the some of the letters written by plaintiff witness 1.

Exhibit V to V 4& V 4(a) Letters written by second defendant to Mr. Moulanker.

Exhibit W. Sandal Oil ledger. ... See O.S. 29/ 1930-31

Exhibit W (1). Entry in Exhibit W dated 8-2-1926 o

Exhibit X. Sandal Oil stock Book.

Exhibit Y Customer's ledger.

Exhibit Z Journal.

Exhibit AA. Statement sent by Mr. Mowlanker to the first defendant Co.. in respect of account sales for November 1928.

Exhibit BB to BB 6. Letters written by second defendant to Mr. Mowlanker.

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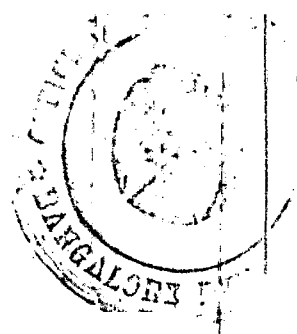
Exhibit CC. Cash Book.

881 *cc1*
Exhibit ~~cc~~ Entry in Exhibit CC on the reverse of
page 60.

Signed/- A.S.R. Chari,
District Judge.

True copy

R. Kesava
Head Record Keeper.



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31-10-33	9-1-34	<i>9-1-34</i>	Addl Sheets 22-12-33 by 3-1-34	23-12-33
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<i>9-1-34</i> <i>com</i>	<i>9/1/34</i> <i>com</i>	<i>Emm...</i>	<i>...</i>	

(1) The main suit, filed is O.S.28 of 30-31 for a sum of 8 lakhs and odd against the Essenfleur Products Ltd, as the 1st defendant and the following directors as the other defendants:-

- (2) Mr.B.Sitaramachar
- (3) " M.Hiriyanna.
- (4) " B.K.Garudachar
- (5) to (7) Heirs of late Mr.Vardhamania.

Action taken against
assets of Essenfleur
Products, Ltd.

(2) Two book debts, one of Rs.91,144-5-6 and the other of Rs.89,568-7-2, due to the Essenfleur Products Ltd, respectively from the Mysore Development Syndicate and the Asbestos Co, Ltd, were attached before judgment and the Director of Industries and Commerce who was appointed as Receiver for the purpose, has filed two suits, O.S.38 of 30-31 and O.S.39 of 30-31 for the recovery of the debts respectively.

(3) The Mysore Development Syndicate is a private partnership consisting of the following individuals:-

- (1) Mr.B.Sitaramachar.
- (2) " G.K.Padmarajia.
- (3) " W.Ramalinga Moodliar.
- (4) " M.Harianna.
- (5) " B.K.Garudachar
- (6) " S.Sajjana Rao.
- (7) " S.Parameswara Bhatta.
- (8) " N.Shamanna Udupar.

If the debt can be established, every partner will be jointly and severally liable to pay the same.

(4) The Mysore Asbestos Co, Ltd. against which

O.S.39 of 30-31 is filed, is a limited company Mr.Nageswara Iyer was saying that this company had good assets, but no definite information on this point is available in the records here.

(5) Book debts of Essenfleur Products Ltd. have not been given as security to the Mysore Bank for the loan due to the Bank by the Company. The Bank has obtained a decree for about a lakh and thirty thousand rupees against the Essenfleur as well as its directors (since they were sureties for the loan). In pursuance of this decree, the building, factory and all assets mortgaged to the Bank were sold in Execution 30 of 30-31 on the file of the District Court, Mysore and the Bank themselves became purchasers for Rs.10,000/- The Director of Industries and Commerce as a receiver appointed in the Bangalore Court, moved the Mysore Court for setting aside this sale, with a view to his purchasing the properties for Government in case they could be had cheap at the Court auction. The sale was set aside, but Government decided against the proposed purchase. The Public Prosecutor Mysore who was appearing in this execution case for the Director, has been instructed not to take any further action in the case on behalf of Government but he has been asked to continue to watch further proceedings with a view to prevent any possible collusion between the several parties interested in the case

This was found necessary since otherwise the properties mortgaged to the Bank might be sold for a very low price and the Bank may come in for the balance to claim the debts due to the

Essenfleur Co which Government have attached and are trying to recover in the two suits mentioned above.

Against Sitaramachar:

(6) The following properties of this defendant have been attached in the main suit:-

(a) A paid up policy for Rs.9,130/- in the official Branch of the Mysore State Insurance.

b) Amount (not known) due on a policy in Oriental Co., Ltd

(c) 10 shares of the Mysore Bank, over which however, the bank has some lien.

(7) In addition an injunction order has been obtained against Sitaramachar preventing him from receiving from late Mr.Mavlankar's estate either the Mica (or its value) said to belong to Sitaramachar. The value of this Mica was reported to be about £1266-4-1. The Trade Commissioner's recent report however shows that a sum of £179/- and odd has been till now realised by the Receiver in London and that "several cases of Mica are still in the Receiver's possession".

Mr.Nageswara Iyer has intimated that he is taking necessary action to get at this property.

Against Vardnamania's Estate.

(8) Two Pearl necklaces and certain jewels belonging to this estate were in the custody of late Mr.Mavlanker. These were deposited in

Coutts & Co in the joint names of Mr. Rice and late Mr. Mavlankar.- The Master in London has excluded these jewels from the assets of Mavlankar's estate. In the main suit here, an injunction order has been obtained prohibiting Vardhamania's heirs from recovering this property.

Mr. Nageswara Iyer has been instructed to take early action to get at this property.

(9) 11 cases of this article which were said to belong to late Mavlankar but which were sent to Essenfleurs for sale, were assigned over by Mavlankar to Government on account of sandal oil dues.

Mr. Ramalingam who is the Receiver appointed by District Court Mysore, in the suit filed by the Bank of Mysore, had custody of these products.

On an application made by Government in that Court, the Receiver handed over 4 cases to the Director who has realised Rs. 430-12-0 by sale. The money is in deposit in court pending decision as to whether the goods belonged to Mavlankar or were the property of Essenfleurs Ltd.

Mr. Ramalingam has to account for the remaining 7 cases, which he appears to have disposed of as Receiver of the Court.

The Public Prosecutor Mysore is appearing for the Director in this application.

Urgent and Confidential.

General and Revenue Secretariat

Dated, Bangalore, 24.3.31

9066/S

Law 32-31

Highness the Maharaja of Mysore,
Development Departments.

Two collections relating
to lists to be subd
by Essentflour Products
under Sec 32 Comp.

Reyn put up

with Dev 2339
22-12-31

2806
P of 31

MP
30/12/31

e Committee,
Bangalore.

Letter No 18862 dated 10th March 1931
her the surrender value due on paid-
taramachar may be paid to the
e that a paid up policy for Rs.9130/-
n lieu of policies Nos. 17985 and
f the Mysore State Life Insurance ha
ivil suit filed in the District Judge
irectors of the Essentflour Products
the paid up policy No.59 referred to
assess. If this is different from

the policy already attached, details as to the amount payable under
the Policy and the date of maturity of the policy may kindly be
furnished early with a view to obtain an order of attachment.

I have the honour to be,

Sir,

Your most obedient servant,

M. S. Chennappa

Secretary to Government,
Development Departments.

Reply from Mysore: 24.3.31

Dated 15.3.31 to Secy Dev.

stating that the policy 59 and 46
are attached in the list

Dear Mr. Hamilton,

Mr. A.R.Nageswara Iyer, Advocate, Bangalore who is conducting the Sandal Oil Civil Suit wants the assistance of Mr. D.Seshagiri Rao immediately for a few days. I am to request you to kindly instruct Mr. Seshagiri Rao to meet Mr. Nageswara Iyer and do the needful at once.

Yours sincerely,

To

F.A.Hamilton, Esq., C.I.E.,
Inspector General of Police in Mysore.

GOVERNMENT OF MYSORE

ADDRESS--
SANDAL
BANGALORE
CODE USED: "BENTLEY'S"

TELEGRAMS:



SANDALWOOD OIL FACTORY
SANKEY'S LODGE

Bangalore, 21st May 1931
Camp Mysore

No.
Enc.

Dear Sir,

With reference to your D. O. letter No. 580 of the 19th instant requesting that Mr. Bhavani Shankar Rao may be asked to go over to the Public Offices on the 20th instant, I write to inform you that I am leaving for Bangalore to-night and the services of Mr. Bhavani Shankar Rao will be placed at the disposal of Mr. Seshagiri Rao for a couple of days from to-morrow.

Yours sincerely,

Ramanatha Rao

P. Mahadevayya, Esq., B.A., B.L.,
Legal Remembrancer to the Govt. of Mysore
Bangalore.

Dear Sir,

Mr. Nageswara Iyer wants Mr. Bhavani Shankara to assist Mr. D.Seshagiri Rao, Assistant Superintendent of Police for a couple of days in connection with the Sandal Oil Civil Suit. I request you to kindly ask him to go over here at the Public Offices tomorrow at 12 noon, when Mr. Seshagiri Rao will be present also.

Yours sincerely,

To

C.Ranganatha Rao Sahab, Esq., B.A.,B.L.,
Director of Sandal Oil Factories in Mysore

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

Read:—

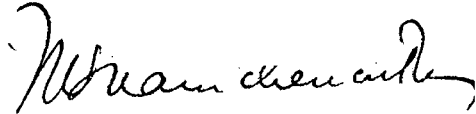
Letter No.5059 dated 25th May 1931 from the Director of Sandal Oil Factory requesting that the services of an Auditor of the ~~in~~ Comptroller's Office may be placed at his disposal to have the accounts of the Mysore ~~Essenflour Products Co. and the Development Syndicate~~ ^{Essenflour Products Ltd.} audited with a view to taking steps for the recovery of the debts due by the ~~said~~ ^{Mysore Products Co. and the Development Syndicate} companies to the Essenflour Products, and stating that the Auditor may be paid his salary plus his deputation allowance during the period of his deputation.

Letter No.9 Sml. dated 2nd June 1931 from the Comptroller to Government furnishing his opinion in the matter.

Order No.D./10801- ^{Fu}

Dated, Bangalore. 17th June 1931.

Government are pleased to direct that the services of Mr.K. Natarajan, B.Com. Offg. Superintendent of the Comptroller's Office, be placed at the disposal of the Director of Sandal Oil Factory for a period of one month in the first instance. Mr. Natarajan is stated to be now drawing Rs.100/- plus Rs.20/- Ag. allowance, and he will be given the usual deputation allowance of 20% calculated on his salary.


For Secretary to Government
Development Department

The Director of Sandal Oil Factory in Mysore.
The Comptroller to Government.

Letter no. 13 dated 13th July 1931 from
the Dir. S.O.F. reporting that two
independent civil suits have been
filed in the M. Ct. Bangalore
against the Mysore Development
Syndicate and Mysore Asbestos
Co. for Rs. 77,241/- and Rs. 75,906/-
respectively for amounts due from
them to the Esplanade Products Ltd.

Subd for review. The Dir.
S.O.F. has been appointed as Receiver
in the case filed against the Esplanade
Products Ltd. ~~consequently~~ the suits now
filed against the Dev. Syndicate and

Bangalore, 3rd July 19 31
193

No.

FROM

C. RANGANATHA RAO SAHIB, ESQ., B.A., B.L.,

DIRECTOR, SANDALWOOD OIL FACTORY IN MYSORE,

BANGALORE.

7 40

GEN. & REV. SECRETARIAT.
4 JULY 1931

DEVELOPMENT BRANCH.

To

The Secretary to Government ~~at Mysore,~~

Development Departments,

B A N G A L O R E.

Sir,

P. 83...
S.O.F. 78-30-5

In continuation of this office letter No. 5521 dated 25th June 1931, I have the honour to report for the information of Government that two independent Civil Suits have been filed in the District Court, Bangalore, against the Mysore Development Syndicate, and Mysore Asbestos Products Company Ltd., for Rs 77,241-5-6 and Rs 75,906-7-2 respectively, which sums they owed to Mysore Essenflour Products Ltd., on 30-6-28.

Action is being taken to take possession of all the account-books and other papers of the Essenflour Products Company Ltd., filed in the Mysore District Court, (in connection with C.C.No.1/A.D.M of 1928-'29 and O.S. No. 25/28-'29 on the file of the District Judge, Mysore Division) for detailed audit being conducted ~~here~~ by Mr

Amal.

I have the honour to be,
Sir,
Your most obedient servant,

C. Ranganatha Rao
Director.

Sent separately. Their
true extension of the series
of the special audit is
and the accounts of the 2 companies

THREE ANNAS



ಮೂರು ಆಣೆ 20

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE DIVISION.

BANGALORE, Dated 24-10-1933.

PRESENT:- A.S.R.Chari, Esq., B.A.B. L., District Judge.ORIGINAL SUIT NUMBER 28 OF 1930-31.PLAINTIFF:- The Government of Mysore.

V E R S U S

DEFENDANTS:- 1) The Essenflour Products Co., Limited. 2)

Mr. B. Sitaramachar. 3) Mr. M. Hariyanna. 4) Mr. B.K.

Garudachar. 5) M. V. Sanatha Kumariah. 6) Lakshmipathaiya.

7) Veerendrakumariah. 6 and 7 minors by guardian Sanath

Kumariah 5th defendant. (since attained majority) Suit with-

drawn as against defendants 3 to 7. Vide order dated 23-5-1933

Suit for a decree for Rs. 8,39,793-6-1 with costs and

current interest from date of suit to date of payment against

the 1st defendant company, and defendants 2 to 4 personally

and against the assets of the late Mr. Vardhamaniah in the

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CR. 2292
21-10-33Mr. BR. Vardhaman
Vepes

Spent 34

Kero 6.

Cost 9-00

(1) The main suit filed is O.S.28 of 30-31 for a sum of 8 lakhs and odd against the Essenfleur Products Ltd, as the 1st defendant and the following directors as the other defendants:-

(2) Mr.B.Sitaramachar

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(4) " B.K.Garudachar

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Action taken against
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(2) Two book debts, one of Rs.91,144-5-6 and the other of Rs.89,568-7-2, due to the Essenfleur Products Ltd, respectively from the Mysore Development Syndicate and the Asbestos Co, Ltd, were attached before judgment and the Director of Industries and Commerce who was appointed as Receiver for the purpose, has filed two suits, O.S.38 of 30-31 and O.S.39 of 30-31 for the recovery of the debts respectively.

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(7) " S.Parameswara Bhatta.

(8) " N.Shamanna Udupar.

If the debt can be established, every partner will be jointly and severally liable to pay the same.

(4) The Mysore Asbestos Co, Ltd, against which

O.S.39 of 30-31 is filed, is a limited company. Mr.Nageswara Iyer was saying that this company had good assets, but no definite information on this point is available in the records here.

(5) Book debts of Essenfleur Products Ltd have not been given as security to the Mysore Bank for the loan due to the Bank by the Company. The Bank has obtained a decree for about a lakh and thirty thousand rupees against the Essenfleur as well as its directors (since they were sureties for the loan). In pursuance of this decree, the building, factory and all assets mortgaged to the Bank were sold in Execution 30 of 30-31 on the file of the District Court, Mysore and the Bank themselves became purchasers for Rs.10,000/- The Director of Industries and Commerce as a receiver appointed in the Bangalore Court, moved the Mysore court for setting aside this sale, with a view to his purchasing the properties for Government in case they could be had cheap at the Court auction. The sale was set aside, but Government decided against the proposed purchase. The Public Prosecutor Mysore who was appearing in this execution case for the Director, has been instructed not to take any further action in the case on behalf of Government but he has been asked to continue to watch further proceedings with a view to prevent any possible collusion between the several parties interested in the case.

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*Is not the attachment
effort to prevent
the Bank from
me*

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(a) A paid up policy for Rs.9,150/- in
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(b) Amount (not known) due on a policy in
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(c) 10 shares of the Mysore Bank, over which
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(7) In addition an injunction order has been
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Donperaleo

18.1.32